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***Government Policy Direction in Botswana, Namibia, and South Africa to  
their San Communities: Local Implications of the International Indigenous  
Peoples' Movement***

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HRTBON001

A minor dissertation submitted in partial  
fulfillment of the requirements for the award of the degree of  
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Faculty of Humanities  
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## **Compulsory declaration**

This work has not been previously submitted in whole, or in part, for the award of any degree. It is my own work. Each significant contribution to, and quotation in, this dissertation from the work, or works, of other people has been attributed and has been cited and referenced.

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16 February 2007

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## **Abstract**

As the movement of indigenous peoples' rights, largely based in the experience of Indians of the Americas, has expanded to include the particular African context of what constitutes an "indigenous peoples," new discussions have emerged amongst governments in the southern African region over their San communities. The governments of Botswana, Namibia, and South Africa have each displayed varying reactions to San claims for an "indigenous peoples" status and the rights accorded as such. Whereas the colonial past was often dominated by silence on the San and a non-recognition by the government of their ethnic distinctiveness, in the democratic era the states have been much more likely to attempt to craft a space for the San in policy and programmes. However, particularly in a region still reeling from an ethnically-divisive past, there exist tensions around recognising the San in a manner different from other groups in the state.

This study analyses the government statements of these three case studies around the San—in an approach termed the government policy direction—to demonstrate that the states are increasingly recognising the San as a distinct ethnic community. The central question raised is why the three states have recognised the San differently and at different times, and what can account for those differences. To answer the question, the study presents as a technique a Continuum of Typologies to classify the responses and to show the degrees of recognition each government accords the San: from the lowest degree of a Negative Recognition to the highest degree of a Recognition of a Full Indigenous Peoples' Status. In examining the continuum, three interacting factors are presented as explanation for the rightward shift in the continuum towards greater San recognition; namely, regional relations, democratisation and the opening of civil society, and international normative changes. Ultimately, the third factor of international norms is argued as the primary explanatory factor.

Whilst the San activism in the region has largely occurred at the margins, it is gaining in pace and pressure and will likely have repercussions as the international indigenous peoples' movement gains greater international normative status. The study uniquely presents a neglected facet of the state-building experiences of the region and exemplifies the process by which international human rights norms affect local policy.

## **Glossary of terms**

ACHPR	African Court of Human and People's Rights
ANC	African National Congress
AU	African Union
BDP	Bushman Development Programme
DCD	Department of Constitutional Development
GDP	Gross Domestic Product
HPI	Human Poverty Index
IACHR	Inter-American Court of Human Rights
ILO	International Labour Organization
INGO	International non-governmental organization
IPACC	Indigenous Peoples of Africa Co-ordinating Committee
IWGIA	International Work Group on Indigenous Affairs
NGO	Non-Governmental Organization
OAS	Organization of American States
OHCHR	Office of the High Commissioner for Human Rights
PanSALB	Pan South African Language Board
RAD	Remote Area Dweller
RADP	Remote Area Dweller Programme
SACU	Southern African Customs Union
SADC	Southern African Development Community
SADF	South African Defense Force
SASI	South African San Institute
SWAPO	South West Africa Peoples' Organization
TAA	Traditional Authorities Act
UN	United Nations
UNPAN	United Nations Online Network in Public Administration and Finance
UNPFII	United Nations Permanent Forum on Indigenous Issues
WCIP	World Council of Indigenous Peoples
WIMSA	Working Group of Indigenous Minorities of Southern Africa

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## **Chapter 1**

### **1.1 Introduction**

San communities in southern Africa have dramatically upped their activism in the past decade by participating in international-level discussions promoting indigenous peoples' rights such as at the United Nations, by mobilizing through a network of San non-governmental organizations (NGOs), and in pressing for greater representation as traditional leaders within their domestic governments. The contemporary international norm is to accord a particular 'indigenous peoples' status to the global community of indigenous, or First Peoples, that have emerged and voiced their common claims for social and economic rights at the international level, and the San have identified with these claims.

Though it is not in dispute that various San communities have been a collectivity of hunter-gathering peoples in southern Africa for thousands of years, what is new is a phenomenon to recognize these first peoples as a First Peoples as well. That is, the San today are seeking government recognition as an aboriginal 'indigenous peoples' according to the international norms on what this constitutes.

There are thus new discussions in the region around indigenous peoples' rights, most notably in Botswana, Namibia, and South Africa. The states are inevitably drawn into the discussion due to their international human rights obligations yet this is often at odds with their localized notions of how to address the San communities. Each government has resisted recognition of their San communities as an 'indigenous peoples' in the international usage, yet displays varying degrees of recognition of the San and their rights by enacting local programmes and policies that relate to their welfare. Whilst the international-level San advocates most often perceive the San communities in a uniform format, as one ethnic group or an indigenous peoples, the local governmental level does not speak with one voice: Botswana typically approaches the San in a non-ethnic way in its policies, Namibia usually approaches the San as an ethnic minority group alongside its other ethnic groups, and South Africa has at times approached the San as a distinct ethnic minority deserving of particular rights.

In observing these new discussions, I ask the research question of *how have Botswana, Namibia, and South Africa approached their San communities in different ways at different times, and what can account for the variances?* To answer the research question, I bring together relevant government statements on the San into what I term the government policy direction of the three case studies. I then establish a typology framework as a technique to classify the government policy direction towards recognition of the San. These typologies posit the government responses on a continuum within a range from one extreme of silence on the San issue to the endpoint of full recognition and rights granted to the San based upon their indigenous peoples' status. The typology technique is significant because it places the government policy direction on a continuum that measures their degrees of recognition of the San, and allows for explanation of the variations.

I then argue that in fact the three states have increasingly shifted towards a new recognition of the San as a distinct ethnic group and that there are three interacting factors that account for the variation: the regional relations pre-and post-colonial rule, democratisation and the opening up of civil society, and the entry of the international indigenous peoples' movement into the region. I conclude that the third interacting factor, the international indigenous peoples' movement, is ultimately the primary explanatory factor for the shift.

The end of apartheid provided a political opportunity structure for San to re-emerge as a political issue that had long stood dormant, and the governments naturally began to reformulate policy around the San during this time. Further, the opening of civil society allowed for local human rights NGOs to support San activism. Both factors partially account for the San gaining a place on the local political agenda. However, the international indigenous peoples' movement has especially added to the dynamics of San recognition by presenting a new language in which to speak of the San, setting a target for how to approach them, and providing a vehicle to reach that target.

## **1.2 Structure of the study**

The study is thus an analysis of the government policy direction towards the San communities by the governments of Botswana, Namibia, and South Africa. In doing, it is an anatomy of the San internationalization into the indigenous peoples' social movement; it analyses several critical and interrelated aspects of their internationalization to provide a well-rounded understanding of this phenomenon and its impact on the region. Chapter Two is a review of the relevant literature. Then, the study progresses as follows:

### *The international movement of indigenous peoples and the San*

The third chapter discusses the phenomenon of the international movement of indigenous peoples that has rapidly gained momentum in the past several decades. Indigenous peoples have begun identifying as a global indigenous community and have pitched their claims directly at the international level rather than working through the channels of their domestic governments.

The activism in the southern African context of the San, as the focus of this study, will be related to the ethno-political discourse in the post-independence era.

The San have waged their political claims on the grounds that they are foremost a matter of collective human rights rather than a series of scattered individual claims to their domestic governments. As a collectivity of indigenous peoples, the San communities claim for particular rights given their distinct indigenous peoples experience in a manner different from other segments of society. Again, government recognition of the San as an indigenous peoples is a precursor to achieving the claims they seek.

### *Presentation of Data: Government policy direction*

Chapter Four discusses the changing government policy direction to their San communities and the San calls for a recognition of a particular status as an indigenous peoples. It categorizes the responses of Botswana, Namibia, and South Africa that shows their recognition of San indigeneity from colonial rule to the post-independence era. I demonstrate that the recognition of the governments to the San as an indigenous peoples can be categorized into a set of typologies. As evidence, government statements are examined and grouped by these types that range from

complete silence on the San as an ethnic group to full recognition of the San as an indigenous peoples and their particular rights (See Methodology, section 1.4).

*The international movement and the San policy direction*

Chapter Five is an analysis of the above categorization in the government policy direction towards the San by the governments of Botswana, Namibia, and South Africa. The categorization of the data is developed into a Continuum of Typologies to show that the five typologies fall along a scale of low to high degrees of recognition, and that the governments are increasingly moving towards higher recognition of San and their rights. That is, they have begun to recognise the San communities in their countries as a distinct ethnic group called an indigenous peoples, and have at times attempted to create San-specific government policies and programmes that acknowledge their distinct experience.

The role of interrelated factors is discussed and related to how the indigenous peoples' movement represents a social movement that was able to vie for political space post-independence. Regionalism and democratization interacted with the international norm of indigenous peoples' rights and together explain the responses. Ultimately, the third factor, the entry of the international indigenous peoples' movement into the region, is offered as the primary explanatory factor for the trend.

I have chosen to break down the chapters in this manner in order to most clearly build the argument of *why* the governments have reacted to the San claims for recognition in the way that they have. Chapter Three provides the necessary conceptual basis and background on the international indigenous peoples' movement so as to understand how the discussions on the San as an indigenous peoples are informed by a larger international norm of indigenous peoples' rights. I then present and classify the data on government reactions to the San into a set of typologies that demonstrate the government policy direction towards San recognition. In presenting the government data, it is then obviated that similarities and differences exist across the three case studies and in their colonial and democratic eras. Finally, I analyse the data by placing the government policy approaches to the San on a continuum and offers three interacting factors for why their approaches have changed over time.

### 1.3 Explanation of Terms and an Introduction to the San

Terminology has hounded the international deliberations on indigenous peoples' rights from the outset, and this study cannot, regrettably, present a solution to the ongoing dilemma. It can, however, define them for the purposes of this study so as not to become mired in terminological uncertainty. To start with the most glaring issue, the term *indigenous peoples* must be defined for the purposes of this study in particular but without neglecting the broader conceptualization of its usage in the international discussions. It can be understood from a straightforward manner, as an ideological concept, in a legal context, or in an anthropological reading. These variety of understandings inform the contemporary political aspects of its usage and influence the debates that have emerged around the recognition and rights accorded to groups such as the San.

Surprisingly, "indigenous peoples" as a concept has entered into international discourse without much more than a list of common characteristics of who exactly it entails; even the World Bank has adopted formal directives concerning indigenous peoples despite a clear definition.<sup>1</sup> Indigenous peoples in the contemporary usage are referred to by a multitude of factors that characterize them. Loosely, indigenous peoples are vulnerable tribal peoples of the world that most usually pre-exist the settlement of other groups which now dominate the state. Given this international conceptualization of what constitutes an indigenous people, the groups referred to as indigenous peoples of Africa in the international discourse are a panoply of groups that are mainly hunter-gatherer and pastoralists. Some of the best known are the Pygmies in the equatorial forests of Central Africa and the Great Lake Region, the Hadzabe of Tanzania, the Maasai and Ogiek of Kenya, and, the focus of this study, the San of Southern Africa.

As hunter-gatherer or pastoralists, they tend to spill across state borders and are largely disconnected from the dominant state systems around them. They, in a manner

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<sup>1</sup> Barume, pgs. 36-7, refers to the World Bank's Indigenous Peoples Operational Directive No. 4.20 (September 1991), in Barume, Albert Kwokwo, *Heading Towards Extinction?: The Case of the Twa of the Kahuzi-Biega National Park, Democratic Republic of Congo*. Copenhagen: International Work Group for Indigenous Affairs, 2000.

similar to indigenous groups around the world, have retained some significant (often visible) aspects of their cultures and social institutions that are distinct from the majority of society.<sup>2</sup> African indigenous peoples do not always directly follow a literal sense of straightforward aboriginality, yet they have exhibited distinguishing characteristics that parallel the situation of those in Australia, the US, and Canada that are clearly understood as 'indigenous' peoples. Whilst these indigenous peoples are not the *only* marginalized people in Africa, they are amongst the most vulnerable in the continent. Development practitioners demonstrate that they are continually moved off of ancestral lands,<sup>3</sup> underrepresented in political structures, and excluded or underserved by social services more acutely than others. Their economic and internal systems of governance are simply not provided for by the existing channels of the state system, rendering these peoples both vulnerable and alienated.

Of further importance to the current study is to understand conceptually the distinction between indigenous groups and ethnic or minority groups within a state. Whilst ethnic groups indeed share common cultural and socio-physical characteristics amongst group members, and may be underdeveloped compared to other groups in society, indigenous peoples refer to a specific sort of ethnic group that is tied historically to a certain land area and is characterised by their structural marginalization. Organisations and scholars arguing for indigenous rights establish that indigenous groups are incomparable to minorities because indigenous groups are often "prior nations or peoples" who have been victimized and demand protection of lost rights (rather than rights accorded to them), and point out that the groups' ancestors were sovereign nations incorporated into "foreign political units."<sup>4</sup> A critical aspect of indigenous groups is that they typically reject the concept that they are minorities within the state structure; rather, they identify more closely as a nation rather than as an ethnic minority in the state's care—though they rarely seek

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<sup>2</sup> Kipuri, in Wessendorf, Kathrin, ed. *Challenging Politics: Indigenous Peoples Experiences with Political Parties and Elections*. Copenhagen: International Work Group for Indigenous Affairs, 2001, pg. 254.

<sup>3</sup> Prominent examples from the Southern African region are the forced land removal controversies in the Central Kalahari Game Reserve in Botswana and the Kalahari Gemsbok National Park in South Africa.

<sup>4</sup> Stavenhagen, in Assies, W.J. and A.J. Hoekema, *Indigenous Peoples' Experiences with Self-Government*. International Work Group for Indigenous Affairs (IWGIA) Document No. 76, Copenhagen: IWGIA and University of Amsterdam, 1994, pg. 22.

secessionist strategies to express this nationhood.<sup>5</sup> Further, whilst minorities have rights as individuals and are tied to the state as individual citizens, indigenous peoples assert collective rights.<sup>6</sup>

For the purpose of framing the concept, it is helpful to also refer to indigenous in the current working definition used in United Nations (UN) proceedings on the Draft UN Declaration on the Rights of Indigenous Peoples<sup>7</sup>:

"groups having a historical continuity with pre-invasion and pre-colonial societies, [which] consider themselves distinct from other sectors of the societies now prevailing in those territories...An indigenous person is one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognised and accepted by these populations as one of [their] members (acceptance by the group)."

The international set defines indigenous peoples as such and then lists common characteristics they share, such as non-dominance in their state; historical links to pre-colonial societies; strong links to territories; distinct social, economic, and political systems; distinct language, culture and beliefs; and self-identification as distinct from national societies.<sup>8</sup> Even given these characteristics, the practice of the UN has been to allow groups to self-identify rather than prescribing one comprehensive or authoritative list of indigenous peoples.<sup>9</sup> The definitions of indigenous peoples, understandably, are contentious and the source of much consternation to governments, as will be discussed in greater detail in this study with the debates around the San in Botswana, Namibia, and South Africa.

However, even lacking a crystal clear definition of this term across various sectors of societies, it is more important that there exists a common understanding of the term for this particular study. Indigenous peoples herein refers to the international usage of the term, as groups that encompass the above common characteristics and

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<sup>5</sup> For a discussion of ethnonationalism in all its intricacies, see Walker Connor's *Ethnonationalism: The Quest for Understanding*. Princeton: Princeton University Press, 1994.

<sup>6</sup> Barume, pg. 37.

<sup>7</sup> First presented by Martinez-Cobo in the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Study of the Problem of Discrimination Against Indigenous Populations*, UN Doc. E/CN.4/Sub.2/1986/7. Note that the definition is a working definition and has never been formally agreed upon.

<sup>8</sup> See Draft Declaration on the Rights of Indigenous Peoples, version adopted by the Human Rights Council, New York: UN Headquarters, 30 June 2006, included in annex of Report to the General Assembly on the Work of the Human Rights Council, UN Doc. A/HRC/1/L.10. Attached to this study as Appendix A.

<sup>9</sup> To participate in key indigenous peoples activities at the UN, via the UNPFII session held each May, the official policy is that any group self-identifying as indigenous peoples may register.



that have either themselves claimed indigenous peoples status through international institutions or that have been widely referred to as indigenous peoples by international institutions. That is because the purpose of this study is not to enter into a theoretical debate about the foundations of indigeneity, but rather to study how the San communities have entered into a particular international movement of 'indigenous peoples.' I take the international approach to the San as an indigenous peoples also to have a point of reference to gauge how the governments in the three case studies align with this view. The international indigenous peoples' definition of the San and their rights is, for example, what I will later refer to as Typology 4 (the furthest point on the continuum I present) and by utilising the international norm as a yardstick I can then measure the variations in the government responses.

A second definition that is necessitated is that of **government policy direction** since it becomes a key phrase in the study. Official government policy on the San in the narrow form of bills and laws is rare. However, it is clear that the governments have responded and made statements regarding the San and it is this broader conceptualization of policy that is used. Also, because the San internationalization and recognition issues are not only recent but are rapidly developing at the time of this study—i.e. because the issue is a current, dynamic issue—it warrants a unique approach to its study that is able to capture the nuances of the emerging policy issues. Whilst political science has a tradition of policy analysis and of the roles of actors in the policy process,<sup>10</sup> it fails to capture policies as they emerge, as they are in progress. Also, it lacks in discussion of policies that do not relate to the primary realist conceptions of power, such as the international normative issue of indigenous peoples.<sup>11</sup> Both of these issues are discussed in the literature review.

Hence, "government policy direction" is used as a catch-all for a variety of government-related statements towards the San. Specifically, I take into account the statements delivered by the states' delegations to the UN or other governmental bodies, interviews with NGO representatives about their interactions with government officials, the most notable government speeches that refer to the San, and other

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<sup>10</sup> See for example the study of agenda-setting in Kingdon, John. *Agendas, Alternatives, and Public Policies*, 2<sup>nd</sup> edition. New York: Harper Collins College Publishers, 1995.

<sup>11</sup> See Rubenstein and Tax, "Power, Powerlessness, and the Failure of Political Realism," in Brosted, J., J. Dahl et al. *Native Power: The Quest for Autonomy and Nationhood of Indigenous Peoples*. Oslo: Universitetsforlaget As.

reporting on government statements from local press sources. These sources are used to show the changing degrees of government recognition towards recognizing San and their claims to rights—the government policy direction.

When examining this government policy direction, a closely linked phenomenon is the issue of government recognition of the San. By **recognition** I refer to the government reference to the San as an ethnic minority community and/or as a distinct ethnic community that is termed an “indigenous peoples.” In this analysis of the government policy direction via the documents listed above, I look for explicit or implicit recognition by the government that the San exist as an ethnic minority community and I categorize the statements into a set of typologies, described in the Methodology, section 1.4.

The recognition issue is critical because once it is recognized that the San do exist then a policy threshold has been crossed and it follows that government action can take place. In a sense, government recognition of the San is the first stepping stone that allows the San to “become” an issue. Before the moment of mentioning a group called the San (or Bushmen, or Basarwa, or any other distinguishable term) in political policy documents, the San are not a government issue as a community; they do not ‘officially’ exist.

Another term frequently used throughout the study is **internationalisation**. In reference to indigenous peoples, this should be taken to mean the shift in their claims from non-unified, domestic-level efforts to their direct appeal to international institutions such as the UN and international human rights NGOs. It refers to their ongoing assertion that they, as a collectivity, deserve international status and rights, an action that has coalesced into an international movement as described in the next Chapter. Previously, the vast majority of indigenous groups, if they sought claims at all, directed them to their domestic governments and typically did not see themselves as part of a broader pan-indigenous movement. Particularly gaining momentum since 1970, when the UN called for a study of the self-determination of indigenous peoples, the pace of international activity has quickened.

Another term in obvious need of definition is the very focus of this paper, the **San communities**. In lieu of an overly narrow definition that obfuscates the

complexities, I will address the need for definition of the San with enough background to adequately contextualize their situation:

### ***Background on the San of Southern Africa***

Southern African groups currently identifying themselves (or identified by international advocates and institutions) as indigenous are referred to under the generic category of San, as there is no single term shared by all groups.<sup>12</sup> They are distinguished by their historical reliance on hunting and gathering as their primary mode of subsistence and their marginalized status from Bantu language-speaking and European settlers in the past as well as in the present day. San refers to the descendants of the aboriginal people of the entire subcontinent—stretching from present-day Angola and Zambia to the southern Cape—whom have now been confirmed to have existed from at least 20-25,000 years ago.<sup>13</sup> They are aboriginal in the sense that they predate the southward migration of Bantu language-speaking pastoralists on the eastern and western sides of the subcontinent about 2,000 years ago. Despite the contact with the Bantu language speakers, the San largely remained in the Namib and Kalahari areas down to the Cape as hunter-gathers, although there is evidence of assimilation of language, inter-marriage, and integration into the trade routes and economic networks. Together, the Bantu language-speaking peoples and the white settlers have become the dominant forces in the southern African region socio-economically. The San's distinctions of language, physical type, and modes of subsistence have blended with the dominant society over the years; the original languages are often lost, intermarriage has altered the physical distinctiveness, and most San are landless agriculturalists or are unemployed.<sup>14</sup> However, time has not

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<sup>12</sup> A language and terminology note is necessary: Ultimately, all the groups referred to as Southern Africa's indigenous have the same *genetic* origin, yet there are three language families (Ju; Khoe; and Taa and !Ui or Southern Khoe-san languages) and many different histories and identities involved. San refers to the collectivity of all of these peoples and, although San identity is highly fluid and, more recently, contested, it is nonetheless the dominant classification. The categorization of San is further less than ideal because it is a term imposed by the outside Bantu-speaking and white colonisers, yet it is preferable to other popular names such as Bushmen or Hottentots as these terms are regarded as overtly etymologically pejorative. In the case of Botswana, the San are referred to as 'Basarwa.' Note also that the various symbols used for San words refer to the distinctive click sounds of their languages.

<sup>13</sup> Saugestad, in Hitchcock, Robert and Diana Vinding, eds. *Indigenous Peoples Rights in Southern Africa*. Copenhagen: International Work Group for Indigenous Affairs, 2004, pg. 24. Evidence of culture and society is expressed, for instance, in the ancient rock art and engravings that dot southern Africa and can be dated as recently as the mid 19<sup>th</sup> century.

<sup>14</sup> Saugestad, in Hitchcock & Vinding, pg. 25.

blended the disparities between the socio-economic realities of the San and the now-dominant groups; for instance, the UN's Human Development and Poverty Indices rank the San in Namibia with a Human Poverty Index (HPI) of nearly three times that of the national HPI and a Human Development Index (HDI) about one-third the national average.<sup>15</sup> San in Botswana experience a 77 percent illiteracy rate, the highest in the country.<sup>16</sup>

The San population of southern Africa is between 85,000 and 90,000 people, as follows:

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<sup>15</sup> Suzman, James. *Minorities in Independent Namibia*. Report of Minority Rights Group International. London, 2002. pg. 21.; International Labour Organisation. "Indigenous Peoples of South Africa: Current Trends." Project for the Rights of Indigenous and Tribal Peoples, October 1999. Geneva: International Labour Office, pg. 1.

<sup>16</sup> Good, Kenneth. *Review of Government Policy*, Consultancy to the European Union on the Condition of the San in Botswana, (1999) cited in Mazonde, pg. 140 in Hitchcock and Vinding.

**Table 1: SAN BY THE NUMBERS IN BOTSWANA, NAMIBIA, SOUTH AFRICA (2001)**<sup>17</sup>

	Major San groups	Total Population of All San	San Population as % of National Total <sup>18</sup>
<b>BOTSWANA</b>	Naro Qqoon Tshwa	<b>San Total: &lt;47,000</b>	<b>San Total: &lt;3.3%</b>
<b>NAMIBIA</b>	Hai   om Ju   'hoansi !Kung !Xo Khwe/Kxoe/Barakwengo   Nu     en	<b>San Total: &lt;33,000</b>	<b>San Total: 1.8%</b>
<b>SOUTH AFRICA</b>	!Xu Khwe Khomani	<b>San Total: &lt;4,350</b>	<b>San Total: &lt;0.02%</b>

In **South Africa**, San are often referred to as Khoe-san to partially reflect the linguistic and cultural diversity of peoples included under the general San categorization.<sup>19</sup> There is also an unspecified number of “revivalist” Khoe-san people associated with the Cape Cultural Heritage Development Council (CCHDC) and who seek to re-assert a perceived lost Khoe-san ethnicity. These groups, particularly the Khoe-speaking Nama and Griquas and the “revivalists,” have competing and contested claims to San ethnicity. The aim of this study is on the San communities that exist as distinct communities and have identified as such, yet it must be noted that any claims to indigenous peoples’ status by Nama, Griqua, or revivalists will be a factor in the government positions on San recognition.<sup>20</sup> It is most relevant to

<sup>17</sup> Suzman, Regional Assessment, 2001. San data is presented only for Botswana, Namibia, and South Africa because the study is limited to those countries for the reasons explained in section 1.4. South African data is from Stavenhagen Report, 2005.

<sup>18</sup> Suzman, Regional Assessment, 2001

<sup>19</sup> Khoe-san is also frequently written as Khoisan, which originated in 1928 with a German ethnographer’s attempts to encompass the hunter-gatherers known as San with the Khoekhoe herding peoples. San in the general sense most used in international discourse and literature refers to the totality of these peoples into collectivity known as the San. However, locally, many distinguish more sharply between Khoekhoe peoples and San and therefore the Khoe-san name is conventional when specifically discussing South African indigenous peoples.

<sup>20</sup> There is a great disparity in the socioeconomic status of those allying themselves with the San indigenous identity; the more formally-educated Nama and Griquas enjoy markedly higher development levels than others grouped as San peoples. Some, such as Suzman in his Regional

establish that together, as a San collectivity, these groups have turned internationally and have politicized their claims into a social movement.

In Southern Africa, then, the three countries under concern have a critical mass of people “indigenous” to the region in an aboriginal sense by roughly similar migrating and colonial experience. However, the concept of these San indigenous groups is by no means a straightforward issue of aboriginality; the San are influenced by the international legal developments and are subject to contestations over their indigeneity. When invoked, the ‘San’ label should thus be understood to be a *choice* by the groups to identify with the international movement (or as a choice of the international indigenous peoples’ movement to include the San), rather than as an inherent and wholly self-originating label.

Finally, I often refer to the *San issue* in this study, as in discussing the government policy direction to the San issue. I use ‘the San issue’ as a replacement to the term that some governments have referred to as “the Bushman problem;” or how to optimally address the communities self-identifying as San. The post-colonial administrators were particularly confronted by making a decision on how to relate to those communities. What I mean in using this term is primarily the presence or lack of recognition by the governments of the San as a peoples distinct from other segments of the population in a way that corresponds with the international conceptions of an “indigenous peoples.” Born out of the recognition issue, though, is the collection of socio-economic, political, and cultural claims that they seek.

While the San are in many areas constitutionally protected in theory, their situation has rendered them excluded and lacking the benefits of those protections in

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Assessment, eliminate all but “highly marginalized San communities” because the other groups might “taint the credibility of the San case” (pgs. 28-9). Suzman argues that by claiming indigenous status the on-the-ground issues of the San communities are not effectively represented or addressed. He also states that some San delegates from Botswana and Namibia voiced this opinion at the Griqua and revivalist Khoesan-dominated *Khoesan Identities and Cultural Heritage Conference* (1997) in Cape Town. There is a fear that these “better-off” groups will dominate the San indigenous claims and be the primary beneficiaries from them, or that the disparities across these groups is too great to conflate into one collective movement. In this study of the political claims of the San, I take the international convention of the San as a broad, fluid collection of self-identifying San communities and am not explicitly concerned with highlighting *only* the most marginalised; elites and activists that also identify as San are significant to my study of San recognition. I do, however, single out the San specifically rather any group that may identify as indigenous, such as the Nama or Griqua. I recognize that the San label is far from being a neat category, but I take the position that all groups that identify themselves as San or that are identified as San by advocates and international indigenous practitioners are all significant to the purposes of this study of government recognition of those termed the San.

practice. Therefore, the government is confronted with the choice of addressing the particularities of the San or not. The government makes a decision to address the San communities as a collectivity deserving of recognition and rights, or to deny that there exists these communities within the population, to simply argue that all people within the borders are citizens. At the governmental level, then, when the government responds to the “San issue,” they are essentially validating the presence of the San as communities as well as their claims for rights. These claims have come in the form of targeting the San’s situation with government programmes and legal decisions.

My use of the term “San issue,” therefore, should be understood as the approach to address the groups identifying as San as an indigenous peoples (i.e. recognition issue) as well as bearing in mind the broader scope that recognition as an indigenous peoples carries with it (i.e. the claims for human rights issues and resources surrounding that recognition).

## **1.4 Methodology**

The methodology of the study is a qualitative comparative analysis of the three case studies of Botswana, Namibia, and South Africa. The study is based upon a critical analysis of international and domestic legal documents. It also consists of secondary data of authoritative studies on the status of indigenous peoples and field reports from non-governmental organisations. The evidence on NGOs borrows from Cape Town-based Indigenous Peoples of Africa Co-ordinating Committee (IPACC); Windhoek, Namibia-based Working Group of Indigenous Minorities of Southern Africa (WIMSA) and Kimberley, South Africa-based South African San Institute (SASI) for data on San activism and internationalization. The data was supplemented by direct interviews and informal discussions with San advocates at these NGOs: the directors of IPACC, WIMSA, and SASI, and the legal advisor for SASI. These individuals were selected because they identified themselves as having the most international political experience with San issues, and could comment on the history and scope of San participation in the international-level activism. The study is greatly augmented by my direct observations as the government statements were submitted at

the proceedings of committee meetings of the UN around the Draft Declaration on the Rights of Indigenous Peoples in October and November 2006 (see Appendix A).<sup>21</sup>

The focus of the study is limited to the San in Namibia, Botswana and South Africa and excludes San in Malawi, Zambia, and Zimbabwe for several reasons. One reason for this choice is straightforward: these are the areas with highest San populations so it makes sense to accord them the most attention. Secondly, these countries, largely *because* they have the highest San populations, have produced the greatest amount of reliable data and research. Thirdly, despite linguistic differences, San communities in Botswana, Namibia, and South Africa are a natural grouping geographically because of the Kalahari; the San communities are more similar in their lifestyle and traditional subsistence strategies across this Kalahari region. The Ju |'hoansi San even overlap the borders of Botswana and Namibia. The region is also most similar in its colonial and post-colonial political experience. Fourthly, the groups in these countries have been the most frequent to voice common international claims regarding their indigenous peoples' rights,<sup>22</sup> and therefore, as the purpose of this study is concerned with this phenomenon, the San in these three countries are a natural choice.

My methodology in researching the San is influenced by the dominant approach to San research, discussed in the literature review in Chapter Two. As a San researcher, I recognize that I must consider the complexities of San representation. My own lens to San is not overtly a sociologist one that is aimed at San social development or an anthropological account of San via an ethnography; I take a political researcher role that analyzes the phenomenon of the changing government policy direction of three countries to an issue—their degrees of recognition to their San communities.

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<sup>21</sup> This was possible because of my ten-week internship with the United Nations Permanent Forum on Indigenous Issues, which coincided with the deliberations over the Draft Declaration.

<sup>22</sup> For example, the San from these countries often interface together with their government representatives, advocates, and academics, such as at the Conferences on Development Programmes for Africa's San/Basarwa Population (1992 and 1993) that were convened by the governments of Botswana and Namibia, or the Khoesan Identities and Cultural Heritage Workshop (1997) in South Africa.



### *Explanation and Justification of Methodological Framework*

To evaluate the government approach to the San, I developed a typology of the government statements that serves as the methodological framework of the study:

In the presentation of my data in Chapter Four, I classify the government statements into a series of types ranging from Negative Recognition, Non-recognition, a Non-ethnic Position, an Ethnic Minority Position, a Distinct Ethnic Minority Position, and an Indigenous Peoples' Position. These typologies are placed on a continuum to demonstrate that the government recognition of the San can actually be measured by its placement on a scale of response. The continuum then allows for explanatory factors to be presented to answer why the governments fall on the continuum where they do. The continuum is a technique to measure the government statements around the San and shows the degrees of recognition from low to moderate to high.

My study of policy direction is an invented approach to address a very real situation concerning the San political discussion that falls outside these traditional modes of study. The policy discussions around the San carry a material impact to the affected communities in the form of access to resources and social services, as well as an underlying ideological effect of empowering and reinforcing their communities through their increased recognition. In this sense, the study is unique and perhaps indicative of an emergence of a body of political science literature that will arise to confront similar issues that fall outside of the political mainstream but yet are prescient and evolving.

I admit my own role as a San researcher follows in a long line of research about the San and I am cognizant of the representation issues at stake in contributing to the already bulging body of literature on the San. In fact, anthropologists and academics point to the fact that the San are somehow “overstudied,” saying that the writing and attention granted to the San dwarfs the situation; it has been argued that there may even be more San researchers than San peoples themselves.<sup>23</sup> Therefore, as a researcher, I must be aware of the representation issues at stake by my slant on the

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<sup>23</sup> Suzman states that the San are the subject of over 1,000 books, films, and articles, and that their international media profile is disproportionate to their population size and marginal status, in *Introduction to the Regional Assessment*, pg. 25

San for, after all, the issues discussed are not merely about policy documents on abstract concepts but rather at the core are about real peoples. I must thus realize my role as an academic and how my writing about the San is part of a larger association amongst writers and intellectuals that can impact the San's real lived experience.

### *Limitations*

The crux of the study evaluates the policy direction of the three countries vis-à-vis their San communities, so it would seem natural to contact San members as well as political elites involved in the process. This would have, admittedly, complemented the sections of the study on the San's incorporation into the international indigenous movement by providing San perceptions of that change. Unfortunately, the research issues involved with interviewing San community members posed too great a hurdle to allow for direct interviews. Further, interviewing San community members would raise another set of methodological issues around the "native informant" conflict of representation, the burden of one person translating his culture for the researcher, and the "silencing" issue of deemphasising certain aspects of cultural identity in some interactions whilst emphasising other aspects in other interactions. Interviews with government officials posed a similar obstacle. However, it can be confidently established that the collection of policy statements and interviews others have conducted with them do represent an ample and sufficient record of their positions. In presenting a spectrum of opinion across the academic literature, the NGO advocacy publications, the historical accounts, and the government statements, it is intended to minimise the weight accorded to any one perspective.

Also, since the study largely concerns the international influence on the movement, the primary interviews with the San NGOs and San advocates do offer valuable perspectives and accounts of the internationalization process in a meaningful way that complements and expands straightforward academic research.

## **1.5 Conclusions and significance of the study**

The study concludes that the activism networks of indigenous peoples occurring at the international level is the primary reason for what the study presents is a changing policy direction in Botswana, Namibia, and South Africa towards recognition of their San communities.

Beyond the overt contributions of the study to understanding a changing ethno-political discussion in the southern African region, the study of the San activism and the government responses of Botswana, Namibia, and South Africa is, ultimately, a larger demonstration of how an international social movement can affect local change. This is highly pertinent as social networks have become increasingly global. A peculiar yet fascinating dynamic of the study is that the movement and ideology of an “indigenous peoples” is not actually ‘indigenous’ to the region. The indigenous movement was for the San a ready-made social movement; the exogenous ideas and advances of the movement were adopted by the San before a substantial grassroots movement had occurred at the local level. Relatedly, the study exemplifies a new facet of international relations—the interplay between transnational advocacy networks and their possibility to be a policy driver. The indigenous peoples’ movement success in region is also significant and raises the idea that perhaps social movements can surprisingly meet with success in post-conflict or newly-independent developing states where there is more room for major change than in highly developed states.

Further, the success of the indigenous activism itself is actually a possible indicator of a shift in international relations to recognizing the potency of human rights and ethnicity. Whilst indigenous groups in effect represent the least likely cases for advancement due to their hyper-marginalised status, their success and very survival as a people demonstrates the enduring significance of ethnicity not only in Africa, but also reinforces it in international relations as discipline. The internationalisation of indigenous groups adds a critical complexity to discussions of state sovereignty.

## **Chapter 2: Literature review**

Whilst no publication known to the author has handled the several overlapping issues in just this manner—which is precisely the significance of producing it—there indeed exist a great many works on the issues that have informed this current study. I will survey the literature by starting with background writings on the San; I limit the literature to two debates in the literature: the so-called Kalahari debate amongst historians and anthropologists, and the Developmentalism debate amongst state-builders. These debates are the most relevant because they add layers of context to my argument; when I discuss regional relations, for instance, it is significant to understand what underlying contentions are at work amongst academics and policymakers.

Next I survey the relevant literature structured by the three interacting factors I offer in the Analysis; I present the literature of regionalism, democratisation, and international norms and state policy. These three factors are the three factors of my argument and the literature presented here is the background that sets up my San-specific discussion in the following chapters.

Finally, I focus on the final factor of international norms because it is what I will argue is the primary factor. I extend the normative literature to include discussion of the relationship between international norms and transnational advocacy networks since, after all, a key phenomenon is that the San have aligned with the broader movement.

### **2.1 Literature on San ethnicity**

The key writings on the San in Botswana, Namibia, and South Africa show that discussion of San issues has been sparse except for historical and anthropological accounts, which are numerous. Political discussion of the San typically groups the San with other ethnic groups and discusses them under broader categorisations of citizenship and ethnicity questions in the making of the post-colonial state. Colonial

literature, as collected in a volume edited by Schapera and Farrington (1933),<sup>24</sup> is either silent on the San or relegates them to a footnote in the literature that simply lists them as a curious tribal peoples. Some writings exist in the form of reports or statements and represent a degree of interest in San, though they stop short of recommending action most often because of the indirect rule policy that would preference leaving San issues to the domestic administrators. Throughout the 1930s, for example, British colonial administrators in Botswana would issue studies and statements that suggested reform in Bechuanaland regarding the 'problem' of Tswana treatment of the Basarwa (San) but that would not take action to implement the suggestions.<sup>25</sup> Thus the colonial-era literature on the San is negligible and offers little in the way of San recognition. The larger body is of an ethnographic or archaeological interest.

A body of literature exists on San representation issue, dominated by an anthology by Cape Town artist Pippa Skotnes (1996).<sup>26</sup> In this anthology, Skotnes, as editor of articles by Wilmsen, Jolly, Smith, and others, establishes the symbolic realm of the San in the post-colonial mind. Jolly's article speaks of the "Bushman package," of that which others have posited on the San as requisites in the process of "becoming Bushmen," such as an idea of 'Bushmanness' constituting physical traits including small stature, yellow skinned, large buttocks, a click language, and lifestyle attributes of dwelling in caves, making engravings, and carrying poisoned arrows.

Mazel's article lists a slew of historical inquiries into the pre-colonial history of the San, from early interest in rock paintings and archaeology in the 1880s to a later interest in artefacts in the 1920s. Similar to the Bushman package, most of the early writings on the San assigned character attributes to them such as lazy, cunning, treacherous, suspicious, unlovable, thieving, or brutal savages. In so doing, Mazel also demonstrates that initially European settlers showed minimal interest in San history because recognising the San would have also meant acknowledging their

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<sup>24</sup> Schapera, Isaac and E. Farrington. *The Early Cape Hottentots, Described in the Writings of Olfert Dapper (1668), Willem Ten Rhyne (1686), and Johannes Gulielmus de Grevenbroek (1695)*. Originally published by Cape Town: Van Riebeeck Society, 1933. Reprinted by Westport, Connecticut: Negro Universities Press, 1970.

<sup>25</sup> Picard, Louis A. *The Politics of Development in Botswana: A Model for Success?* Boulder: Lynne Rienner, 1987, pg. 48.

<sup>26</sup> Skotnes, Pippa. *Miscast: Negotiating the Presence of the Bushmen*. University of Cape Town Press, 1996.

claims to the land, and that this differs from more recent inquiries (1980s) to San history that examine the San as a peoples.

Wilmsen's study in Skotnes' anthology discusses the overly-nostalgic European view of Bushmen, the historical burden posed by the use of names such as Bushmen, and the fabrication of Bushmen imagery. The imagery theme is also discussed in the anthology in articles about South African tourist advertising and in the appropriation of rock art images. Thus the contemporary government recognition issues at the centre of this study can be partially read in the light of this historical context, as part of a tradition of and ebb and flow of interest in the San by those in the dominant position in the state.

Related to the representational issues, what is of greater importance to this study is the series of debates that the study of the San has inspired amongst academics concerned with sociological issues of the San (the Kalahari debate):

### 2.1.1 The "Kalahari debate"

Skotnes' anthology frequently discusses the divide between the "traditionalists" and the "revisionists," a debate some have collectively termed the Kalahari Debate. Barnard presents how the traditionalist view of the Bushman is characterised by Laurens van der Post (1958, 1961)<sup>27</sup> and his emphasis on the Bushmen/San as an isolated hunting and gathering culture that was basically isolated until the recent era, and the revisionist view is espoused by Wilmsen (1989)<sup>28</sup> and Lee (1979),<sup>29</sup> who argue that the Bushmen/San are in reality an underclass and part of a larger social system.<sup>30</sup> The revisionist view often argues that San were in most cases locked into a patron-client relationship with the land owners of the farms upon which they worked or in which they engaged in loan cattle arrangements. Anthropological studies on the Bushmen in the Ghanzi district of Botswana and earlier historical accounts

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<sup>27</sup> Van der Post, Laurens. *The Lost World of the Kalahari*. London : Hogarth Press, 1958; and *The Heart of the Hunter*. London: Hogarth Press, 1961.

<sup>28</sup> Wilmsen, Edwin N. *Land Filled with Flies: A Political Economy of the Kalahari*. Chicago: University of Chicago Press, 1989.

<sup>29</sup> Lee, Richard. "The Gods Must Be Crazy, but the State Has a Plan: Government Policies towards the San in Namibia." *Canadian Journal of African Studies*, Vol. 20, No. 1, 1986. Pgs. 91-8.

<sup>30</sup> Barnard, in Skotnes, pg. 239.

corroborate this view of Tswana encroachment into Bushmen territory prior to the Boer era at the turn of the 20<sup>th</sup> century.

Gordon (1992)<sup>31</sup> explores this concept by presenting the role of policy, economists, and academics—especially anthropologists—in creating the modern conceptualization of those labelled “Bushmen.” He also presents the variety of the dominant representations of the San: as “innocent heroes” such as in the popular (1980) film *The Gods Must be Crazy*, as “vermin” eradicated by the colonists, as “superhuman trackers” conscripted by the South African Defence Force, to the “living embodiment of prehistory” for the academic; he demonstrates that these images and representations shape the present perception of the San. Wilmsen (1989) is another giant in San representation literature, similarly demonstrating the interplay between economy and class and ethnic identity construction largely brokered by the West.

This body of literature proves that there is in fact a changing nature of who or what constitutes the elusive “Bushman” or San peoples, and that the authority of labelling these ethnic group boundaries have always primarily lain with groups other than the groups themselves. When studying the international activism of the San, and the concept of a global community of indigenous peoples, it has been important to bear this literature in mind and realise the local cultural context which contrasts with the international activism on indigenous peoples.

Relatedly, Robins (1997, 2001)<sup>32</sup> speaks to the constructions of community and identity amongst the San, and how these can be appropriated by other actors, such as donors and government officials. Robins discusses this divide between the academic discussion about the San and the lived experience of the San by terming it a “hybrid” discourse with “double visions” of the San as both ‘First Peoples’ and as modern citizens-in-the-making. Therefore, even discussing international matters as to definitions of what an “indigenous peoples” constitutes is an approach decidedly from above without, it is argued, much bearing on the daily experience of the communities

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<sup>31</sup> Gordon, Robert J. *The Bushman Myth: The Making of a Namibian Underclass*. Boulder: Westview Press, 1992.

<sup>32</sup> Robins, Steven. “Transgressing the Borderlands of Tradition and Modernity: Identity, Cultural Hybridity, and Land Struggles in Namaqualand (1980-1994).” *Journal of Contemporary African Studies*, Vol. 15, No. 1, 1997; and “Citizens and ‘Bushmen’: The Khomani San Land Claim and the Politics of Citizenship and ‘Community’ in the Kalahari.” *Journal of Southern African Studies*, Vol. 27, No. 4, December 2001, pgs. 833-53.

such definitions seek to address. Hitchcock and Holm (1993)<sup>33</sup> indicate that analysts overlook the fact that foreign donors, academics, NGO leaders, and civil servants are deciding the “substance and rate of social change among the San.”<sup>34</sup> The role of such external actors in creating community and identity is a concern in this study as I must be aware of the role of the NGOs and academic literature that has come before and how it shapes the modern San situation. The external influence on the San is also to a large degree a motivating or “push” factor for the San communities to internationalise their claims for rights.

The Kalahari debate is relevant in that it infuses my discussion of government policy direction. Governments often claim that Westerners have mythologized or fable-ized the San, and it is important to be cognizant of this sentiment when analysing their approach to the San. The fact that the study of the San, and of an indigenous peoples' movement in Africa as a whole, is largely seen as West-based will have repercussions for how they formulate their policy.

### **2.1.2 Developmentalist debates**

In order to make sense of the contentions around the government recognition of the San, it is important to relate the San to a key narrative occurring between non-ethnic developmentalist perspectives and cultural recognition of ethnic groups within the three states. Especially with the advent of democratization, the new administrations of the three states have grappled with the competing positions of their internal ethnic groups as first and foremost a social (rather than ethnic) concern within the new states, versus a view that emphasises promoting the cultural specificity of groups within the state.

These tensions are apparent in the governments' varying approaches to the San, both past and present. The tensions are highlighted in the course of this study by the categorization of the responses in the Continuum of Typologies; the non-ethnic position is related to the leftward end of the continuum that signifies a low degree of

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<sup>33</sup> Hitchcock, Robert and John D. Holm. “Bureaucratic Domination of Hunter-Gatherer Societies: A Study of the San in Botswana,” *Development and Change*, Vol. 24, 1993, pgs. 305-338.

<sup>34</sup> pg. 331.



recognition of the San, and the cultural recognition is related to the increasing end of the continuum that stresses the ethnic distinctiveness of the San.

To inform the argument, it must be noted then that the literature on the San in the region is related to the non-ethnic versus ethnic-specific developmentalist tension. Related to the state-building experience of each country, each government has been forced to come to terms with how to approach their ethnic communities in the fusing of citizenship and the new nation. Botswana, Namibia, and South Africa have each vacillated between promoting international human rights standards that recognise the cultural specificity of the ethnic groups within the states versus crafting a state that is neutrally inclusive of all.

Botswana, most notably, exemplifies the debate. It has had the longest post-democratic experience of the three states and has been forced to react to the apartheid rule occurring around it. It has thus given rise to the largest study of its developmental model, which is ethnically neutral.

The developmental literature of Botswana silences the specific ethnic experience of the San in favour of a neutral approach. Botswana is presented in the literature as a non ethnically divisive state, and writings on the ethnicity of the Botswana state readily note that the studies are difficult due to the government's commitment to a nonethnic and non-racial society.<sup>35</sup> Given this government approach, however, means that the dominant political literature most often neglects the San and instead emphasises the Tswana.

As Mpho argued (1989),<sup>36</sup> the Botswana government has altered over time which groups officially 'exist' or not. After independence, the government continued with the colonial-era de facto policy of privileging of the Tswana and legally enforced the Tswana dominance. Its constitution grants the chiefs of the eight major Tswana groups<sup>37</sup> the right to sit on the House of Chiefs, whilst the rest of the groups are relegated to sharing four seats. He points that in various pre-independence censuses the population included many groups not listed in post-independence figures and calls

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<sup>35</sup> See for example Picard, pg. 5.

<sup>36</sup> Mpho, Motsamai Keyecwe, in Holm, John and Patrick Molutsi, eds. *Democracy in Botswana: Proceedings of a Symposium held in Gaborone, 1-5 August 1988*. Macmillan Botswana, for the Botswana Society and the University of Botswana: 1989.

<sup>37</sup> i.e. the Bakgatla, Bakwena, Bamalete, Bamangwato, Bangwaketse, Barolong, Batawana, and Batlokwa.

the government's claim that there is a Tswana majority a 'myth.' In fact, Mpho says, the Tswana neglected to recognize many groups and instead falsely claimed that those groups voluntarily joined the eight dominant Tswana groups.<sup>38</sup> Instead, Mpho argues that the groups were forced to submit to the eight main tribes and that this became constitutionally enforced; the status of the ethnic groups of Botswana is now 'frozen' at what it was 1895.<sup>39</sup> Mpho's argument that there exists a 'tribal bias' in Botswana where some groups enjoy a legalized supremacy raises the question of if governments are responsible for creating or silencing the very existence of the subgroups in their states like the San. It also points to the fact that majorities and minorities are not inherent entities, they are in fact created out of a set of historical, political, and social experiences. In this current study of the San and how the governments have approached them at different times, it demonstrates that the governments have played a role in fashioning the 'official' existence of the San. It also obviates that despite, or in fact *because of*, a purportedly ethnically neutral approach, groups such as the San are given less political space. However, as I argue, the San are increasingly recognised by the governments, and this new era for the San will have repercussions for the developmental model of Botswana.

Solway (2002)<sup>40</sup> argues that Botswana's minority rights questions have been heightened and that the government is re-evaluating its ethnically neutral state model. She cites the 2000 Balopi Commission that sought public opinion on whether the constitution was discriminatory to some groups as significant evidence that the government at times is open to ethnic matters. As recently as Mpho's writing (1989) the idea of minority rights was largely silent, but by Solway's study the government discussion on ethnic specificity had snowballed. Solway argues that in fact, paradoxically, the effectiveness of the liberal democratic Botswana state has exposed its own weaknesses in regards to minority rights in a way that has allowed for the current minority struggles that have gained attention.

Though these studies are not San-specific, it is critical to view the San recognition as part of this debate and realise that the timing of the San activism and

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<sup>38</sup> *Ibid.*, pgs. 136-7.

<sup>39</sup> *Ibid.*, pg. 137.

<sup>40</sup> Solway, Jacqueline. "Navigating the 'Neutral' State: Minority Rights in Botswana," *Journal of Southern African Studies*, Vol. 28, No. 4, December 2002, pgs. 711-29.

emergence of international indigenous peoples' pressures are currently located within a time when developmentalist debates are under transition in the region, especially in Botswana. Policies that may have been touted as the way forward in the context of the apartheid era in, i.e. Botswana's preference to instead craft an ethnically neutral state, currently are under question as international and regional pressures push the debate in favour of minority rights. Namibia and South Africa, as newly democratic states shrugging off their racially-divisive legacies, are similarly crafting their developmental models. As Croucher<sup>41</sup> demonstrates for South Africa, the government has sought to build the Constitution and policies that are all-inclusive and yet especially recognise previously disadvantaged groups. This attempt at high levels of 'tolerance' often contrast sharply with local views and the dichotomy between the government policy and practice is often wide.

The developmentalist debate thus highlights a series of tensions occurring in the region that serve as a backdrop to the recent San calls for recognition.

## **2.2 The Wider Socio-Political Environment**

As stated, three key interacting factors are presented as explanations for the question of why the three states have recognized the San in the way that they have: regionalism, democratisation, and international norms together best account for the shift in recognition by the states. I will discuss the literature on these three factors in that order, stressing the final factor of international norms because that is ultimately what I argue is the primary factor.

### **2.2.1 Regionalism**

In studying the government recognition of the San, it must be established that the three states do not operate in total isolation to each other. They are members of these broader regional institutions that establish rules and frameworks around, for

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<sup>41</sup> Croucher, Sheila. "South Africa's Democratisation and the Politics of Gay Liberation," *Journal of Southern African Studies*, Vol 28, No 2, June 2002.

example, minority rights issues. The most recent AU summit (January 2007) established a common African position on the UN Draft Declaration on the Rights of Indigenous Peoples and even though South Africa has at times expressed its support of UN indigenous peoples efforts, it also acceded to the AU common position. Thus regional integration will play a role in the outward statements and positions given by the governments as they are increasingly institutionally entrenched in the regional partnerships.

The three states are markedly different in their colonial experiences, most obviously in the apartheid regime, and also in the clear dominance that South Africa enjoys in the region. Perhaps precisely because of the past divisions, regional integration has, in fact, deepened in the past decade and each state has become increasingly committed to regional institutions such as the Southern African Development Community (SADC) and Southern African Customs Union (SACU) and Africa-wide institutions such as the African Union (AU). They have each joined the UN and engage in rigorous international trading. All together, the three states have intense social, economic, and political links to the international community of nations and are influenced by organizational shifts in the regional, continental, and international levels. Gibb (1998)<sup>42</sup> indicates that despite South African dominance in the region, the relationship has not been total dependence of other states upon it; during the regional divide over South Africa's political apartheid policies, the rest of the region also actively pursued economic integration alongside.

Studies by Molutsi (1987) for Botswana, Evans for Namibia (1993), and Booth and Vale for South Africa (1995)<sup>43</sup> speak to the fact that in the democratic era each country has actively sought to integrate itself into the region and world scene. Their studies emphasise that each state is touted as a success story for newly democratic statehood. They are each, however, highly influenced by the pressures from the regional and international relationships. The regional networks pressure the states to reinforce each other especially over mutually beneficial positions, such as

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<sup>42</sup> Gibb, Richard. "Southern Africa in Transition: Prospects and Problems Facing Regional Integration," in *Journal of Modern African Studies*, Vol. 36, No. 2, June 1998, pgs. 287-308.

<sup>43</sup> Molutsi, Patrick. "International Influences on Botswana's Democracy," in Picard, ed (1987); Evans, Graham. "A New Small State with a Powerful Neighbour: Namibia/South Africa Relations Post Independence" (1993); Booth, Ken and Peter Vale "Security in Southern Africa: After Apartheid, Beyond Realism," in *International Affairs*, Vol. 71, No.2, April 1995, pgs. 285-304.

promoting territorial integrity, and their responses to the San must be understood in part in this context.

The dominant literature on regional integration has established that, similar to the experience of the European Union (EU), southern African states are increasingly establishing rules for member states to abide by and pressure each other to comply with the standards. As Booth and Vale establish, also like the EU the region is attempting to forge a sense of regional community despite the destabilizing past. One major way is to build a “common sense of purpose” through seeing themselves as common victims of “structural and geographic insecurities” rather than emphasising their victimisation as at the hands of each other’s actions and aggression. In moving to a community-minded atmosphere, the states are increasingly eager to view themselves as a common security and economic community in both ideology and practice.

The three states are thus permeable to the regional pressures and are not, as it might seem, entirely dominated by South African hegemony. They have each in the democratic era moved towards greater regional integration and international participation. The regionalism literature is relevant to the San argument in this study for demonstrating how states’ positions are influenced by the regional networks. Also, it demonstrates the constraints posed to San communities in trying to hold their domestic governments accountable; San and their advocates must work to break up common positions taken by the states rather than approaching governments individually.

### **2.2.2 Democratisation**

In my answer to the question of why the three states have recognised their San communities differently, one factor I argue is relevant is democratisation and the opening up of civil society. I thus discuss the role of the democratic transition in spurring a more active civil society in the Analysis. However, there is a substantial body of literature on the role of ethnicity in the democratic transitions and this literature, though not San-specific, has repercussions for the San. Specifically, the transition to power of certain groups inevitably left an imbalance between groups, with some groups having more access to resources. Whilst there is a massive body of

literature on the subject, the ones that have been most relevant to my research on the San have discussed the issue of ethnic wealth transfers and the motives behind some groups gaining dominance yet at strategic moments deciding to grant attention and wealth transfers to less dominant groups like the San.

Related to the aforementioned developmentalist debate, there is a critical literature on ethnicity's role in the nationalist questions that newly independent states inevitably face. Nnoli (1994),<sup>44</sup> drawing from the work of Young, Ake, Diamond, Linz, and Lipset, aids in explaining how "commodity relations" in the postcolonial era are not neutral, and are in fact often ethnically-based. When explaining how certain groups become dominant in the independence movement and beyond, Nnoli's work confronts how the recruitment into political leadership originated from a favoured group. In Botswana, the post-colonial founders were of a selection of people who owned and controlled cattle; such an examination of the class character of the Botswana ruling class is helpful for understanding the political marginalization of the San from this political transition. Ihonvbere (1994)<sup>45</sup> similarly discusses the nature of African ruling classes and the manipulation of ethnic differences the ruling groups use to consolidate their control over the society. Each of these sources establish that beyond the rise to power of some groups, it has been in the now-dominant group's interest to at times grant favours and political space to less dominant groups to maintain national unity and assert their own dominance. For the San situation, this literature speaks to factors for why the governments would address the San at all in their already strapped government agendas.

Mazrui (1995)<sup>46</sup> and Mohanty (1992)<sup>47</sup> add to the body of literature on the 'tribal' or ethnic factor in political development. Kimenyi (1997)<sup>48</sup> establishes that the post-colonial administrations were established by coercion rather than consent, and

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<sup>44</sup> Nnoli, O. *Ethnicity and Democracy in Africa*. Lagos: Malthouse Press, 1994.

<sup>45</sup> Ihonvbere, Julius O. "The 'Irrelevant' State, Ethnicity, and the Quest for Nationhood in Africa," in *Ethnic and Racial Studies*, Vol. 17, No.1, Jan. 1994. Pgs. 42-60.

<sup>46</sup> Mazrui, Ali. "The African State as a Political Refugee: Institutional Collapse and Human Displacement," *International Journal of Refugee Law*, Oxford: Oxford University Press Special Issue, 1995, pgs. 21-36.

<sup>47</sup> Mohanty, Susama. *Political Development and Ethnic Identity in Africa: A Study of Angola Since 1960*. London: Samgam, 1992.

<sup>48</sup> Kimenyi, Mwangi. *Ethnic Diversity, Liberty and the State: The African Dilemma*. Northhampton, Massachusetts: Edward Elgar, 1997.

that the coercion has centred on wealth transfers. Osaghae (1994)<sup>49</sup> addresses the “asymmetrical interdependence” among ethnic groups wrought by colonialism, establishes the interconnectedness of class and race in this process, and shows that in the competition for societal resources, the government support to ethnic groups is unequal.

Finally, Mamdani (1998, 2001)<sup>50</sup> establishes a discussion of indigenesness, although in a different sense to the international usage I use, that is prominent in the region and deserves attention for its merits of citizenship dilemmas in postcolonial “settler” states like the Southern Africa region. Citizenship questions here are all the more divisive and confounded in the postcolonial contemporary state, and Mamdani’s discussion elucidates the competing political and moral claims to citizenship. His discussion of the colonial state’s idea of a *civic citizenship* versus an *ethnic citizenship* is helpful in understanding the current reactions to matters of San claims for indigenesness.

My analysis of democratization’s role in directing the level of government recognition of the San is thus framed by this background discussion on ethnic wealth transfers and citizenship dilemmas in the newly democratic states. Finally, I turn to the literature on the third, and primary, interacting factor that I present in the Analysis, the role of international norms:

### 2.2.3 International norms and state policy

A body of literature that is sorely lacking and that would have contributed to this study is a literature on the role of international norms<sup>51</sup> on the process of state policy development. I found this linkage limited in political science literature particularly where matters of an international human rights or moral normative nature

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<sup>49</sup>Osaghae, Eghosa E. “Ethnicity in Africa or African Ethnicity: The Search for a Contextual Understanding,” in Himmelstrand, Ulf, et al, eds. *African Perspectives on Development*, London: James Currey, 1994, pgs. 137-51.

<sup>50</sup> Mamdani, Mahmood. “African States, Citizenship and War: A Case-Study.” *International Affairs*, Vol. 78, No. 3, 2001. Pgs. 493-506; and “When Does a Settler Become a Native? Reflections on the Colonial Roots of Citizenship in Equatorial and South Africa,” Version of paper given as Inaugural Lecture as A.C. Jordan Professor of African Studies, University of Cape Town, 13 May 1998.

<sup>51</sup> Norms, as defined by Stephen Krasner, represent “standards of behaviour defined in terms of rights and obligations” in “Structural Causes and Regime Consequences: Regimes as Intervening Variables,” pgs. 210-43, in *International Regimes*, Ithaca NY: Cornell University Press, 1983.

is concerned, a view that has also been expressed by Sikkink (1993).<sup>52</sup> The major literature is concerned with public opinion or policy outputs, neither of which is the thrust of this study. As Cortell and Davis posit, international relations literature commonly recognizes international norms of sovereignty, free trade, and collective security and it is these norms that the discipline identifies processes for how they become institutionalized at the domestic level.<sup>53</sup> These norms fail to capture the focus of this study; again, greater connection is needed between international human rights norms and their impact on the policy process at the domestic level.

Despite this gap, the policy process literature is replete with models, some of which are useful to this study:

The closest model to this study is Kingdon's "policy streams" approach (1995).<sup>54</sup> Kingdon analyses agenda setting and policy formulation, which most closely reflect this policy direction. He presents three policy streams, one Problem Stream consisting of "real world problems" and past governmental action on those issues, one Policy Stream of the researchers, advocates, and analysts of the problem, and a Political Stream of the elections and governmental leadership on the issue. In studying the San recognition, then, policy streams can inform the argument by demonstrating the variety of actors involved with framing the issues and transforming them into an agenda item. More significant to this study, Kingdon also argues that major policy changes occur when a "window of opportunity" arises and cross-cuts the three streams; when this occurs the policy community develops a proposal for the problem and the political policymakers find it beneficial to support it. In this study, the idea of a window of opportunity is advantageous in analysing the interplay of the independence era of each country with the onset of the international indigenous peoples' activism into the region and it is referred to throughout the Analysis in Chapter 5. Kingdon's window of opportunity relates also to the social movement literature that will be discussed presently.

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<sup>52</sup> Sikkink, Kathryn. "Human Rights, Principled Issue-Networks, and Sovereignty in Latin America." *International Organization*, Vol. 47, No. 3, Summer 1993, pgs. 411-41.

<sup>53</sup> Cortell, Andrew P. and James W. Davis Jr. "How do International Institutions Matter? The Domestic Impact of International Rules and Norms," *International Studies Quarterly*, Vol. 40, No. 4, December 1996, 451-78, pg. 452-3.

<sup>54</sup> Kingdon, John. *Agendas, Alternatives, and Public Policies*, 2<sup>nd</sup> edition. New York: Harper Collins College Publishers, 1995.



As Sabatier acknowledges, one key reason that Kingdon's policy streams approach is unique is that it recognizes the role of serendipity in the policy process.<sup>55</sup> This is also a notable phenomenon at work in this study of San policy direction; it is critical to realize the serendipitous timing of the movement's emergence in the mid-1990s coinciding with the democratic transition in Namibia and South Africa.

Another useful argument is suggested in Cortell and Davis, (citing Risse-Kappen 1995), where it is presented that a key factor in order for the international norms to gain domestic salience is if the issue is able to obtain *legitimacy* in the local political context.<sup>56</sup> Policy change and changing political behaviour will only arise if legitimacy of the issue is present. Cortell and Davis state that a continuum can be created that demonstrates domestic legitimacy. Such a continuum would place the actions of political actors towards an issue on a scale showing their presence or lack of interest and commitment to the issue. States demonstrate their commitment to the international norm not only by hard policy choices but also by issuing repeated declarations of support for it, which also indicates that the leaders associate the international rule with the advancement of the state's interest and values.<sup>57</sup> On the other hand, a denial of the norm or a failure to follow its tenets demonstrates a lack of domestic salience. A country can be said to be at a midpoint when the issue represents a moderate degree of domestic salience, and an issue gains a "prescriptive status" when state actors regularly invoke the international norm to "describe and comment on their own behaviour and that of others, the validity claims of the norms are no longer controversial, even if the actual behaviour continues to defy the norms."<sup>58</sup> A state demonstrates the highest level of legitimacy to the norm when it results in hard policy changes.

My approach differs because I do not argue for a certain state structural configuration as the above approach, which is interested in decision-making authority,

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<sup>55</sup> Sabatier, Paul. "Towards Better Theories of the Policy Process," *PS: Political Science and Politics*, Vol. 24, No. 2, June 1991, pgs. 147-56, pg. 151.

<sup>56</sup> Cortell and Davis, pg. 456.

<sup>57</sup> *ibid*

<sup>58</sup> See Risse-Kappen, "Ideas do Not Float Freely: Transnational Coalitions, Domestic Structures, and the End of the Cold War," *International Organization*, Vol. 48, No. 2, Spring 1994, pgs. 185-214, cited in Cortell and Davis, pgs. 456-7.

does<sup>59</sup> and because my study does not analyze what the presence of legitimacy means for the policy process. However, the argument I present similarly presents the existence of affirmative statements by government authorities over a span of time as demonstrative of the changing degree of recognition to the San issues. Rather than tracing legitimacy as Risse-Kappen, this study traces changing degrees of recognition, but with a similar approach in that the indicators are placed along a continuum to show the degrees of response.

Cortell and Davis add that government and societal actors can utilize international norms to advance their own interests in policy debates; they look to international norms to justify their own objectives or to call into question the legitimacy of an opponent's.<sup>60</sup> Another facilitating process for how international norms become enacted domestically is if it works in tandem with national laws. As Cortell and Davis assess, international norms are often codified into domestic laws or constitutions in a process that has been termed "institutional enmeshment."<sup>61</sup>

These processes are significant to note for this study to understand the processes that political scholars identify as leading up to policy change. To be sure, if the states under concern were to enact a specific policy about recognizing the rights of San peoples, a study could draw from this one and craft a local argument for how the indigenous peoples' movement has become an international human rights norm and how that policy relates that to the policy process literature. For this study, however, the processes of international norms becoming relevant in domestic policy are most significant for demonstrating the role of the political climate and political will of the actors involved with the San recognition issue becoming relevant domestically. That is, as the argument is presented, it is helpful to understand that the indigenous peoples' movement entered the regional political scene at a critical time that was appropriated by the political and societal actors.

My study emphasises, like these others have, that there are exogenous factors influencing the policy direction. A natural extension of this notion is a review of the

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<sup>59</sup> The approach outlined by Cortell and Davis argues that, in analyzing domestic impact, some state structures affect the norms differently. They categorize legitimacy of an issue as being highly contingent upon the existence of a decentralized or centralized nature of state-societal relations.

<sup>60</sup> Examples are offered by Cortell and Davis, pg. 453.

<sup>61</sup> Cortell and Davis, pg. 453, quoting Keohane 1994.

literature on the phenomenon of just how these external social actors have been able to mobilize their resources and gain political space:

## **2.3 International social movements and transnational advocacy networks**

Although there is not sufficient explanation of how international human rights norms become relevant domestically, Finnemore and Sikkink (1998) provide an account of why some human rights issues gain a normative weight that prompts their spread and political salience. The primary factor in making them politically relevant is when social actors are successful at promoting an issue as an urgent social issue. Finnemore and Sikkink take the view that networks of NGOs are “normative entrepreneurs” who engage in a process of bringing the normative concerns to the attention of powerful state actors. This first stage is termed the “norm emergence” phase where the normative entrepreneurs persuade key government officials based upon the strength of their normative arguments and persuasive work to re-identify an issue as “wrong.”<sup>62</sup> The next stage is a “norm cascade” where states, international organizations, and networks institutionalize the norm. The final stage, “internalization,” is when law, professional, and bureaucratic actors conform to the norm. Finnemore and Sikkink’s categorization is helpful to the current study in providing a background to how, in this case, the process by which indigenous rights gained international normative status.

Relatedly, in the literature of Tarrow (1994)<sup>63</sup> and others, the efforts at affecting political change are grouped in the social movement literature. A social movement is here discussed as a catch-all phrase for any collective, organised challenge posed by people with a common purpose to authorities or those in power, or to ideological or cultural practices. The San movement, though not the traditional image of mass protests, is indeed a collective effort at changing the government dynamic in the

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<sup>62</sup> Finnemore, Martha, and Kathryn Sikkink. “International Norm Dynamics and Political Change.” *International Organization*, Vol. 52, No. 4. Autumn 1998, pgs. 887-917, throughout, especially pg. 898.

<sup>63</sup> Tarrow, Sidney. *Power and Movement: Social Movements, Collective Action, and Politics*. Cambridge: Cambridge University Press, 1994.

region to recognise their rights. Tarrow says that the success of such a movement is based upon a political opportunity structure with the factors of *openness and accessibility of government*, the *stability of existing political alignments*, the existence of *sympathetic local elites*, and the *capacity for building stable alliances* and coalitions with other groups. These factors are important considerations when analysing the San's ability to find a space in the newly democratic era. The three interacting factors considered in this study—regionalism, democratisation, and the role of international norms—are what I argue are the most influential to the San recognition, and they are discussed in the final chapter in relation to Tarrow's factors.

As Castells (1998) argues, the growing incapacity of states to deal with the global problems impacting public opinion surely means that civil society enters to fill the gap and take responsibility for global citizenship.<sup>64</sup> Social movements are deeply connected to their ability to reach beyond the local area and gain widespread attention and mobilization of resources across a broader coalition. Social movement literature has begun to recognize also that this trend often originates precisely *because* the opportunity for domestic advancement of the rights is weak. Therefore, activists have seized the new opportunities presented by the technological and social connections available to advance their issues. Brysk (1996) notes that transnational social movement mobilization is a natural reaction to social problems that are increasingly transnational in form. Indigenous group activism corroborates such hypotheses, and fundamentally demonstrates how groups have been able to make their rights salient via the very tools that had previously rendered them excluded from the political agenda. In the southern African region, social movement literature has demonstrated that new movements have emerged in the post-apartheid climate and erupted into a search for a new humanism that challenges the current neoliberal models. An anthology edited by Gibson characterises the nature of the regional movements as “people without any resources are organizing and demanding to be heard” in a way that is “putting post-apartheid South African society on trial.”<sup>65</sup>

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<sup>64</sup> Castells, *The Power of Identity*. Oxford: Blackwell, 1998. pg. 268.

<sup>65</sup> Gibson, Nigel C., ed. *Challenging Hegemony: Social Movements and the Quest for a New Humanism in Post-Apartheid South Africa*. Trenton, New Jersey, USA: Africa World Press, 2006. Citing pgs. 40-1.

A larger body of literature discusses indigenous peoples' experiences with crafting a pan-indigenous identity and with internationalizing their claims for rights. These studies typically take the form of analyzing the role of community elites, academics, and NGOs in shaping the local conceptions of indigeness.<sup>66</sup>

For instance, Igoe (2004),<sup>67</sup> in a study of indigeness in East Africa, is important in its discussion of the "ethnic discourse" around the groups identified as indigenous. His emphasis of the role of the international community and NGOs in shaping the ethnicity of the East African groups is important to consider in the case of the San. In the creation of the international indigenous social movement, Igoe also notes that indigenous peoples are more popular for donors than they are to the state in which they reside.

Also, Brysk (1996)<sup>68</sup> discusses how, in the case of Latin American groups, the making of a panindigenous identity was critical to mobilization of rights. She also presents reasons for how the indigenous peoples' mobilization was able to jump from being a periphery or marginal issue directly to a major one via the use of technological outlets and the media. A primary explanation is that the indigenous groups were seen both as being "exotic" as well as less politicized and, therefore, less contentious. Brysk's study demonstrates how what may appear as weaknesses to indigenous groups, such as residing in rural areas, extreme poverty, or political marginality from the mainstream may actually be a benefit to their claims for rights. Indigenous peoples as a whole, she says, are defined by cultural and racial difference from dominant groups in their states that produced "domestic marginality but international recognition." Brysk's study relates to the San in understanding why the San have received the massive international attention that they have even with scant local recognition or discussion of them. This attention must be understood as a double-edged sword for the San; they rely upon the international attention and donors to assist in the advancement of their claims yet the attention can also lead to a

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<sup>66</sup> See Sawyer, Suzana. "The 1992 Indian Mobilization in Lowland Ecuador." *Latin American Perspectives*, Vol. 24, No. 3. (May 1997),

<sup>67</sup> Igoe, Jim. "Becoming Indigenous in Africa: the Globalization of Maasai and Barabaig Ethnic Identities," Working Paper No. 248. Boston: African Studies Center, Boston University, 2004.

<sup>68</sup> Brysk, Allison. "Turning Weakness into Strength: The Internationalization of Human Rights." *Latin American Perspectives*. Vol. 23, No. 2 (Spring 1996), p. 39.

defensive response from the government officials who may resist the idea of Western influence in the region.<sup>69</sup>

Wilmer's (1993a, 1993b)<sup>70</sup> analysis of indigenous activism and international relations theory consistently argues for the importance of ethnicity in world politics, and analyses the potency of this force in promoting and sustaining the indigenous movement at the international level. Wilmer argues that the indigenous peoples' activism suggests that international relations theory should more adequately account for human needs for recognition, identity, participation, and ethnic affiliation rather than emphasising material or physical needs.<sup>71</sup> She corroborates the view that indigenous peoples have used little than the power of persuasion to influence national and international actors. The San experience affirms this point of view, since the San do not pose a major political stake in southern Africa but they have become an issue nonetheless; they are unlikely to exert major political upheaval or seek political dominance, and yet they are an issue of government concern.

Croucher's study of the emergence and success of the gay liberation movement in South Africa invokes the social movement literature and relates it to local politics in a similar manner to this study. It examines how, in order to enact social change, the local gay rights movement succeeded in coalescing with the strength of gay rights occurring in the Western world, in securing resource mobilization, and yet demonstrates how South Africa's democratic opening created the necessary 'political opportunity structure' that allowed for the movement to gain social space.<sup>72</sup> The gay rights movement is often cited as an identity-based new social movement in a way that is similar to how indigenous groups must establish a shared identity before they can effectively advance their claims. The San movement has similarly worked to present itself in the most advantageous way in the region and is identity-based.

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<sup>69</sup> For instance, the Botswana government, as discussed in Chapter 4, has expressed its wariness to perceived exogenous conceptions of the San as an indigenous peoples. The San and NGOs must adapt their strategies and interactions with the government in a tightrope fashion that uses the international resources and attention yet does not rile the government.

<sup>70</sup> Wilmer, Franke. "The International Political Activism of Indigenous Peoples and the World System." in Schechterman, Bernard and Martin Slann, eds. *The Ethnic Dimension in International Relations*. Westport, Connecticut: Praeger, 1993.

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<sup>71</sup> Wilmer 1993b pgs. 155-6.

<sup>72</sup> Croucher, pg. 317, 321.

The San movement, then, can be understood in part from the social movement literature, particularly the aspects of the new social movement literature that stress the importance of what has been called transnational advocacy networks. It is critical to understand that the San have been able to emerge as an issue area in the region precisely because they have been able to transcend domestic channels and to instead posit themselves at the international level, a trend that will be explained in the following Chapter.

The literature on the San can thus be classified as sparse in terms of explicit political analysis. More often, they are silenced in the dominant state-building literature or are relegated to a historical footnote. However, it is possible to view the regionalism, democratisation, and international normative literature in the region in a San-specific way.

### Chapter 3: The Internationalization of Indigenous Rights

The necessary background to the San and the relevant literature on San debates and the process of international norm-building has been presented. Now it is essential to present further content on the nature of the indigenous rights movement as it has entered the region. This will allow for understanding what movement the San are part of and how it is a phenomenon that serves as the basis of my argument for why governments have changed their recognition of San communities.

Indigenous groups have emerged as a dynamic debate in international law in a manner which some describe as a crystallization into 'customary international law.'<sup>73</sup> Indigenous peoples themselves have been active participants in shaping the discussions and international non-governmental organisations (INGOs) have also emerged as actors in what may be deemed the *internationalization of indigenous rights*. Indigenous claims to cultural issues, land rights, access to resources, intellectual property, and the like<sup>74</sup> have surpassed the level of minority rights-seeking domestic claims. Instead, the claims been pitched directly at the international level into the burgeoning *international indigenous social movement* that is gaining momentum. A set of new, unique understandings and definitions of indigenous peoples have developed at the international level and rights are claimed on the basis of these new definitions. The international policies and norms, along with the activism of the indigenous peoples, constitute an international social movement that is highly unique.

For example, these groups appear unlikely to interact at all or network with each other. However, surprisingly, this is precisely what has occurred. The movement is unique in that it represents perhaps the least likely example of a social movement since it is composed of the most marginalised people within a state.<sup>75</sup> These groups have actually transcended the state level and directed their shared aims in a unified international effort. Although they do not represent a formal state that is recognised

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<sup>73</sup> Anaya, S. James. *Indigenous Peoples in International Law, Second Ed.* Oxford: Oxford University Press, 2004, throughout.

<sup>74</sup> For a fuller discussion of the situation of indigenous peoples and the claims they seek, see Burger, Julian. *Report From the Frontier: The State of the World's Indigenous Peoples.* London: Zed Books, 1987.

<sup>75</sup> Brysk, pg. 39.



by the UN, they have been able to eke a place for themselves as a collectivity using the same instruments and institutions used by the states they are both part of and laying claims against. The movement is also unique because it is different from issue areas such as women's rights, disabled people's rights, or environmental rights that have also engaged in international activism since indigenous peoples are a collectivity of not just individuals or ideas, but of nations of peoples. Without armaments or international economic power, and in clinging to merely a weak political and legal status, indigenous groups have nonetheless fashioned a substantive international effort.<sup>76</sup> Indigenous claims have shifted from being matters of domestic concern or of singular cases deemed racial discrimination; they have found a platform in the most unlikely of venues: via the tools of the international system that is at the root of the very claims for which they seek legal redress. Particularly because the characteristics of indigenous groups—namely, marginalization and the unwillingness of domestic governments to grant them rights—indigenous activism has found its most fertile attention as an international rather than domestic issue area. As Brysk notes, indigenous advocacy differs in *degree* but not in *kind* from other social movements; social movements often have international support and rely upon NGOs, but indigenous activism is perhaps more oriented to these resources.<sup>77</sup> Indigenous peoples found their most eager audience to be the international one, and their advocates thus took on the form of an international network in a way more profound than other social movements.

This chapter will discuss this unique movement's origins and coalescence into a far-reaching social movement that embraces the San.

### **3.1 Indigenous peoples' issues: actors and what they seek**

Every region in the world has pockets of indigenous peoples. The UN estimates there are some 370 million indigenous people in 70 countries—from the Maori in Australia to the Miskito in Nicaragua to the Maasai in Kenya—that all share a similar position vis-à-vis their domestic governments and the world system. In each case, they are characterised by grave social ills, including poverty and health issues

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<sup>76</sup> Wilmer 1993b, pg. 142. See Appendix B.

<sup>77</sup> *Ibid*, pg. 42.

typically far worse than national averages and a crippling situation of political disenfranchisement. Whilst the origin of international indigenous group appeals dates as far back as 1882 when Maori kings in New Zealand turned to the English monarchy to voice their grievances, the movement was not truly bolstered until the 1950s with the recognition of their specific rights by the ILO and, later, the UN. The UN developments have produced both substantive codified documents that protect indigenous rights and, perhaps even more significantly, the developments have elevated the indigenous rights discourse to the international agenda. Through declaring 1993 The International Year of the World's Indigenous Population and devoting 1995-2004 as the International Decade of the World's Indigenous People, the UN has made a concerted effort to stir international consciousness for the particular plight of indigenous concerns. Further, by mobilizing indigenous experts, NGOs, diplomats, and indigenous people themselves throughout the conferences and draft-making process, the UN has both served as a source of indigenous mobilization and sparked a new international debate.

Other key players in addition to the ILO and UN include the bevy of INGOs that have aimed for the development of indigenous international rights in the modern era, the most prominent of which include Survival International, Cultural Survival, the World Council of Churches, the Anti-Slavery Society, International Indian Treaty Council, the World Council of Indigenous Peoples, and the Indian Law Resource Centre. Such INGOs have gained direct access to the dynamic international indigenous rights development through their participation and, in many cases, consultative status in the UN conferences and attendance at the Working Group. At such forums, the INGOs have been able to liaise between the indigenous groups they work with and the diplomatic world.

Collectively, the ILO covenants, UN efforts, and the ongoing work of international NGOs has dramatically altered the perspective of indigenous rights and concerns under international law, particularly within the last two decades. The internationalisation of indigenous group claims has met with considerable success: international legal documents have increasingly proved favourable to indigenous group claims, international institutions have provided a visible platform for these claims, and domestic governments have responded. For example, throughout the UN, indigenous peoples have become an agency focus area throughout the UN system in

addition to the specific Permanent Forum on Indigenous Issues and so indigenous peoples are targeted specifically in development programmes and social policy. The World Bank and UN statistics agencies work to collect data on indigenous peoples since they are often not accounted for in official government statistics and their socioeconomic situation is therefore difficult to quantify. In total, a small but significant place has been carved for indigenous peoples in the international framework. For a chronology of international indigenous activism see Appendix B.

### **3.1.1 The Emergence of San Domestic Activism, 1990-2006**

Major San-specific political activism with the involvement of San peoples, bolstered by their advocates, can be highlighted quite succinctly:

**Land and environmental rights** are a key issue of concern for the San, as for other indigenous groups since indigenous identity and even survival is closely related to the land. As Roy Sesana, Chairman of the NGO First People of the Kalahari, told a group of other visiting Botswana San, "Our human rights are our land. They cannot do anything for us if they take us off our land."<sup>78</sup> Landlessness in southern Africa is common due to the commercialization of land in both the colonial and postcolonial era. Additionally, water and other environmental rights remain a concern to the San and are closely related to the land policies. With the current privatization of land rather than customary law that allowed usage on a communal basis, San face restricted access to water resources and grazing.

The 1999 Khomani Land Claim levied against the South African government, which returned parts of the Kalahari Gemsbok national park to the Khomani San, featured heavy San solidarity particularly in the media surrounding the decade-long proceedings. The San have attempted to manage themselves on the land through their own system of leadership, though it has been necessary for Department of Land Affairs to closely supervise and control many operations. Similarly, San in Botswana have been visible in the December 2006 high court case awarded to San claimants in the Central Kalahari Game Reserve. Also, The Nyae Nyae Development Foundation of Namibia and external NGOs supported the efforts of the Ju | 'hoansi San-controlled

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<sup>78</sup> Cited in Taylor , pg. 155, in Hitchcock and Vinding.

Nyae Nyae Farmer's Cooperative and was successful in gaining a 9,000 km communal land tract in 1997.

**Cultural heritage rights** such as access to primary education in San languages, securing intellectual property rights, benefiting from San culture-oriented tourism, and the management of culturally-significant sites, are at the core of cultural recognition and the assertion of San identity. San participated in the 2002 return of the remains Saartjie Baartman, a Hottentot (San) that had been taken to Europe and exhibited in the early 1800s and whose remains had been on display in Paris museum since. San were also active in their representation in the 2002 Hoodia plant intellectual property case which resulted in a royalty agreement with the South African San Council, a collaboration of San groups receiving NGO support.

Currently, San representatives regularly represent themselves at international conferences and events.<sup>79</sup> However, the San did not engage in domestic activism specifically based as a San peoples until the end of the apartheid era, though they were an issue of government concern prior to then, a topic discussed in the following Chapter. San peoples have had no substantial grassroots activism that was completely independent of some degree of resources and other assistance from non-San advocates. That said, San have begun to organize at the grassroots domestic level to take action. San formed the Kgeikani Kweni (First People of the Kalahari) advocacy organization in 1992 and have subsequently voiced their appeals on issues of poverty, sustainable development, and cultural issues.<sup>80</sup>

In the earliest activism, anthropologists and development workers already in the region would often support and mobilise specific San communities through local land and water projects and form community-based organisations. Today, international indigenous peoples' organizations with a role in the region more often take a broader, regional approach that focuses on development issues commonly faced by all San.

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<sup>79</sup> For example, San have attended the Working Group on Indigenous Peoples of the UN in Geneva, and regularly participate in the sessions of the UN Permanent Forum on Indigenous Issues in New York. Also, the Khwe San spoke at the 2005 International Symposium on the World's Indigenous Languages in Aichi, Japan. International Work Group for Indigenous Affairs (IWGIA), *Indigenous World*, Copenhagen: 2006.

<sup>80</sup> Hitchcock, Khoisan Identities and Cultural Heritage presentation, pg. 8.

### **3.1.2 Regional Implications for Government Recognition of Indigenous Peoples**

The matter of indigeneity is fluid, contentious, and contextual. However, this notion of indigeneity or of an 'indigenous peoples' has become widely used in an international setting and has taken on a specific sense of to whom 'indigenous peoples' constitutes. There is, however, a great divide between the international conceptions of an indigenous peoples and the local interpretations of whom these people are.

In southern Africa, government recognition of the San as an indigenous peoples in the international usage is unpopular. The aforementioned San activism and claims were waged without invoking the language that the San are an "indigenous peoples." Rather, each was a local court ruling, a matter of the domestic government towards the San as a community rather than as an "indigenous peoples" deserving of particular rights. While many hold the notion that it is an historical truth that San predate other people in the sense of "first arrival," the modern aboriginality idea, adding that there is a historical continuity of San communities that are ethnically distinct from the larger population by virtue of their descendancy, suddenly becomes uncomfortable and controversial.<sup>81</sup> There is a sense of discomfort about recognizing the San as "indigenous" in a way distinct from the majority African population particularly given the divisions of apartheid, which makes the idea of some peoples being "indigenous" all the less popular.

Governments remain wary of approaching the San as an indigenous peoples since the fear is that in doing so they may open them up to claims for resources and restitutive rights. To evidence this idea, it is helpful to turn to the discussions over the Draft Declaration on the Rights of Indigenous Peoples (see Appendix A) that occurred at the highest human rights committee of the UN in November 2006 while it was brought up for adoption. The reactions of African states, particularly Namibia and Botswana, demonstrate the concerns of the governments to the new international discussions around indigenous peoples. Botswana, which stopped the immediate adoption of the Declaration by initiating a revision to defer consideration on it—a revision which every African country then supported—made these statements:

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<sup>81</sup> Tong, Maureen. "Protecting the Land Rights of Indigenous People: A South African Case Study," in IWGIA's *Indigenous Affairs: Indigenous Peoples in Africa*, vol. 4, 2003. Pg. 26.

The United Nations should be protecting the integrity of the State because it is within a secure and stable environment that respect for human rights and democracy can flourish. The United Nations should not appear to be abetting and promoting initiatives whose unintended consequences might be the unravelling or disintegration of the state.

...(during post-independence arrangements) there were nationwide consultations on issues concerning land and natural resources rights including minerals. The outcome was that all tribes freely decided to surrender certain political and economic powers to central and local authorities for the mutual benefit of all communities and the nation as a whole...(the Declaration seeks to) reverse or undo what the people of Botswana decided.

Why does the Declaration single out indigenous people from the rest of humanity?...This may have been considered necessary in view of historical experiences in other parts of the world...Surely it cannot be right to attempt to solve a problem in one part of the world at the expense of fomenting trouble elsewhere.<sup>82</sup>

The first two statements underscore that the main issues of the states to recognising indigenous peoples are thus summarised as fears of secession and separatism. The third statement indicates the underlying expression that the concept of indigenous peoples is a non-African concept that has been improperly imposed on the region.

Particularly given the ethnically divisive histories of these three countries, human rights has taken a key role in the post-independence era. Arguments based on treaties or upon a sort of non-immigrant First Peoples versus European-descendants were unpopular amongst Southern Africans in particular given the apartheid history. It was more critical in this region to focus upon national unity than to further differentiate across African ethnic groups, and the language of the international indigenous movement would have demanded just that. Today, the international indigenous peoples' movement seeks to navigate a tightrope between San as a victim of apartheid in a way similar to, yet more acute than, other African groups, and as distinguishing the San as distinctly different from Bantu-descendant African groups.<sup>83</sup> Such local ethnic complexities have meant that the societies are more prone to accepting a human rights approach for the San rather than promoting a purely ethnic one. Increasingly, San advocates are even moving beyond the human rights approach and are instead asserting that the San indigenous rights efforts complement domestic government biodiversity frameworks.<sup>84</sup> The NGOs argue that the biodiversity argument, though new, is more convincing to governments than a purely rights-based approach.

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<sup>82</sup> Permanent Mission of the Republic of Botswana to the United Nations, Statement by Ambassador Samuel Outlule to the Third Committee of the United Nations, 10 November 2006.

<sup>83</sup> This sentiment was expressed in personal communication by the directors of IPACC, SASI, and WIMSA.

<sup>84</sup> Personal communication with director of IPACC.

### **3.2 The Movement Expands to Africa**

Ironically, the international indigenous activism is not 'indigenous' to Africa; it arose out of the context of the Indians of the Americas and the indigenous in settler developed countries and was later adapted and imported to the African situation. An international indigenous peoples' status, despite the stated aims of its global applicability, is simply not designed with the African situation as the primary context.<sup>85</sup> Given the historical context of many African marginalized ethnic groups, in this study the San, the international indigenous movement was initially difficult to apply. The changing recognition of the governments to the San participation in movement are presented in the following chapter. At present, the peculiarities of the African wave of the international indigenous movement must be understood. As the international indigenous advocates increased their successes, San and their advocates increasingly made use of them. Largely, this is due to the movement's increasing paradigm shift to a human rights based framework as the core foundation rather than the treaty-based restitutive approach that dominated at the outset.

In the African wave of the international indigenous rights movement has meant an exportation of the central tenets of the movement—i.e. that there is a pan-indigenous community, that they are threatened and have been denied fundamental rights, and that this situation deserves international attention—to previously unallied regions. Whereas the original movement was predicated upon the settler colony experience, once the movement became strengthened and solidified it was possible for it to consider expansion to areas with very different historical contexts. As a result, the original restitution-based discourse of the movement has been replaced with a human rights-based approach. In this new approach, the movement has expanded to include the threatened tribal peoples of Africa and Asia as part of a global indigenous community.

Recognizing the efficacy of locating the indigenous movement as basic human rights, the UN Draft Declaration on the Rights of Indigenous Peoples, the most prominent international legislation on the issue, has firmly taken a human rights approach.<sup>86</sup> In 1997, IPACC emerged as an Africa-wide membership organization for

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<sup>85</sup> Saugestad, *Contemporary Perspectives*, pg. 18.

<sup>86</sup> Holder, Cindy. "Self-Determination as a Basic Human Right: the Draft UN Declaration on the Rights of Indigenous Peoples," in Eisenberg, Avigail and Jeff Spinner-Halev, eds, *Minorities within*

indigenous peoples' organizations with the aim of uniting them institutionally and promoting awareness of indigenous rights as human rights.<sup>87</sup> IPACC was directly born out of the UN groups and its mandate is entirely reflective of the international activism applied to the African setting. The African Court of Human and Peoples Rights (ACHPR) is another African-wide institution that has produced substantive discussion on an indigenous peoples' status in the contemporary international usage, and in 2005 led working groups to Botswana and Namibia to evaluate the relationship between the governments and indigenous peoples.

### ***African legal conceptions of indigenous people***

Inter-African legal developments have increasingly followed the international legal norms, although no African state has signed the only legally binding document, the ILO Convention No. 169.<sup>88</sup> The legislation of individual African countries very rarely recognizes the existence of indigenous peoples or contains provisions to protect them. Rather, they argue, if human rights are affirmed in their respective constitutions, there is no need to accord an additional, particular status to another group.

A major development has been an African-wide affirmation of "indigenous people" consistent with the international developments in discourse: The African Commission on Human and Peoples' Rights (ACHPR)<sup>89</sup> recognizes the vulnerability of indigenous people and has since 1999 debated their particular human rights situation. Their 2003 Report by the Working Group on the Rights of Indigenous

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*Minorities: Equality, Rights and Diversity*. Cambridge: Cambridge University Press, 2005, pgs. 294-315, throughout.

<sup>87</sup> IPACC informational booklet, 2005-6.

<sup>88</sup> Those that have ratified Convention No. 169 are Argentina, Bolivia, Brazil, Colombia, Costa Rica, Denmark, Dominican Republic, Ecuador, Fiji, Guatemala, Honduras, Mexico, Netherlands, Norway, Paraguay, Peru, and the Bolivarian Republic of Venezuela. Several African countries have ratified ILO Convention No. 107 (1957), which was replaced by No. 169 (1989) to eliminate patronising concepts in the original. The notion of self-determination is present in No. 169, which has been the primary stumbling block for African states to ratify. Those African states that had ratified No. 107 are Angola, Egypt, Ghana, Guinea-Bissau, Malawi, Tunisia.

<sup>89</sup> The ACHPR is an Africa-wide inter-governmental organisation born out of the Organisation of African Unity's (the forerunner to the African Union) African Charter on Human and Peoples Rights, which entered into force 1986. The ACHPR is based in the Gambia. The mandate and composition of the Working Group on Indigenous Populations/Communities mandate was renewed as of the 38<sup>th</sup> working session, 2005.



Populations/Communities<sup>90</sup> is a direct attempt at addressing the ambiguities and divergence in thought across the continent on the concept of indigenous people. This report, by the ACHPR's own admission, has been affirmed by the UN Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, human rights advocates and academics<sup>91</sup> and is therefore influenced by and reflective of the broader international debates. From the African perspective, indigenous groups are presented as a hyper-marginalized, vulnerable collection of groups in a continent already struggling with major human rights issues.<sup>92</sup> Whilst the ACHPR Report is an exception rather than the norm, it does indicate that there is a shift in African legal discourse to recognize the international perspectives of indigenous peoples.

### ***The Movement adapts to the San***

The San can be located within this importation of the outside ideology. In order to expand the movement and provide an applicable tool for these threatened peoples of Africa, the international movement strategically altered its approach to adapt to the African situation. When it was realized that African (and Asian) ethnic groups did not match the dominant profiles for indigenous peoples given at the international level, International groups who had at first reacted with ambivalence<sup>93</sup> toward tribal groups in Africa and Asia began drawing parallels between the decolonization efforts in those regions and the 'original' indigenous areas. It was gradually accepted that the decolonization process in Africa resembled that of Latin America and the indigenous peoples' movement was extended more rapidly to these most marginalized tribal peoples of Africa. The timing was right; major decolonization in Africa occurred just as the first phase of the movement was cresting. The decolonization wave in Africa

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<sup>90</sup> African Commission on Human and Peoples' Rights. Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities, 28<sup>th</sup> Ordinary Session. Copenhagen: International Work Group for Indigenous Affairs, 2005; and two unpublished reports, obtained by correspondence with the ACHPR: *Report of the Working Group on Indigenous Populations/Communities in Africa Mission to the Republic of Namibia*, 26 July-5 August, 2005; and *Report of the Working Group on Indigenous Populations/Communities in Africa Mission to the Republic of Botswana*, 15-23 June, 2005.

<sup>91</sup> ACHPR Report, pg. 9.

<sup>92</sup> ACHPR Report, pg. 14.

<sup>93</sup> Igoe provides examples such as the major WCIP conference that excluded African and Asian groups, citing 'practical organizational reasons,' pg. 5.

and the question of applicability for the tribal peoples there heralded a transition and an opportunity for the movement to expand.

For the San of Botswana, Namibia, and South Africa, the human-rights based approach has allowed the San greater access to improve their status by appealing to international norms arising as part of the 'global indigenous community.' It has been functionally beneficial for the San peoples, despite the complexities and backlashes against an indigenous status in Africa, to ally themselves with the broader indigenous movement.

Robins argues that the changed political landscape in post-apartheid South Africa gave rise to the San movements in the 1990s. Whereas the apartheid era was marked with class-based popular movements, cultural struggles were only able to flourish post-apartheid. Race and ethnicity began to be acceptable bases for mobilization in a way that had previously too closely evoked the language of apartheid's separate development and homelands policies. In the absence of major opposition from the popular Left, Robins maintains, San NGOs and indigenous organizations found a space to revitalize.<sup>94</sup> A similar case can be made for Namibia. For Botswana, San development efforts have always had to walk a delicate line of conforming to government objectives and have found most success at promoting individual issue areas related to social factors of the San rather than an outright San activist movement.

There are thus competing narratives of nationalist rhetoric and the popularity of promoting cultural recognition, such as promoting indigenous knowledge such as the aforementioned Hoodia plant case, or in South Africa's symbolic move of infusing the national coat of arms with San images and language. These wider socio-political factors are related to the developmentalist debate presented in Chapter 2.1.2 and are more fully discussed in the Presentation of Data and the Analysis.

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<sup>94</sup> Robins, pgs. 5-6.

### **3.3 Conclusions**

The concept of an 'indigenous peoples,' then, has surpassed its literal meaning and has taken on a new form in international discourse and, relatedly, in international legal developments. Whilst there is no hard and fast definition of indigeneity, it has been widely agreed that the best approach is a wide one based on guiding principles that allow groups to self-identify and that can encompass the many historical paths leading to a group's indigenous experience. The conceptions of indigeneity that have emerged over the past few decades have dramatically changed the notion that indigenous peoples are but minority ethnic groups within an individual state's care; it implies that indigenous groups worldwide are vulnerable under the world system and are able to look beyond their domestic governments for assistance. The African context of indigeneity is especially significant in broadening of the scope of the international indigenous discourse beyond notions of priority of settlement.

It has been mutually advantageous, then, for the international indigenous movement and the San to unite. The indigenous movement has strengthened by expanding its reach, and the San have been able to engage with a very willing network of international actors in a way they were not able to do at the local/domestic level. In order to promote this San-as-indigenous-peoples status, a number of international actors had to be considered. San have had to become savvy at attending international conferences and workshops that seek to promote a certain kind of development opportunity for them, of collective rights based upon an indigenous status. For the San, this exogenous ideology has been hastily incorporated with, it seems, the hope that it will 'stick' or become real as the movement pushes forward. Rather than waiting for a grassroots movement to occur organically, an outside one has been adopted. San social activism now exists without the traditional mass demonstrations that typify social movements, but rather in the form of participation in NGO networks and international-level dialogue.

## Chapter 4: Presentation of Data

This Chapter presents the data that will be analysed in the next Chapter. It characterizes the government positions towards their San populations, especially emphasizing the post independence responses to the San but also providing the necessary background on the pre-independence response to the San. The major indicator traced is the issue of recognition of the San as a particular ethnic community in the sense of the international norms previously outlined. The data—the government approaches to the San—are classified into a series of typologies that will serve as the basis of analysis in the following chapter, which develops these typologies into a Continuum of Typologies demonstrating the degrees of recognition.

### 4.1 Characterizing Government Positions on the San

The San have been addressed in a multitude of ways by their domestic governments. The governments may or may not have spoken of the San as existing as a San community at all, they may have at various times addressed the San by targeting them with social programmes and policies, the policies they do produce may or may not address the San as a distinct ethnic group, and at times the governments have addressed the San as an “indigenous peoples” that have a particular status as such. These approaches to the San represent a type of *recognition* of the San as a people as well as the claims they seek as a people.

To review, the governments have contentions with recognizing the San as an indigenous peoples, and the sorts of contentions are similar to those raised by many other countries throughout Africa and the rest of the world. The governments are often wary that in affirming the San as an indigenous peoples, they will face consequences; some of the concepts discussed about indigenous peoples, such as the right to “self-determination,” cultural heritage rights, or intellectual property rights, may leave the states vulnerable to legal battles over land and other resources. Particularly in the southern African region, ethnic divisions are especially contentious given the apartheid past, and recognizing a particular group as “indigenous” is unpopular as it is seen as divisive.

Therefore, *recognition* is a key issue for San in the region. In order for the panoply of social, economic, and cultural rights that San and their advocates seek,

recognition as a distinct ethnic group is a precursor. This recognition extends to the conceptualization of them not just as an ethnic group, but as a particular kind of ethnic group, an indigenous peoples. The three countries under concern have all affirmed *de jure* equality of their internal ethnic groups which would seem to include the San,<sup>95</sup> but none of the governments have as yet explicitly issued special provisions for the San along the specific conception of 'indigenous peoples' rights that the international practitioners promote—that is, the three countries have not ratified the seminal international conventions 1989 ILO Convention no. 169 or the 1982 UN Draft Declaration on the Rights of Indigenous Peoples presented in the previous Chapter. When 'indigenous' is invoked in southern Africa, as stated, it usually refers to the distinction between the priority of settlement of all Bantu-language speakers plus the San—all 'Africans'—versus minority European settlers, meaning that *all* Africans are indigenous.<sup>96</sup> How can these different positions be understood, so that they can then be analysed?

#### 4.1.1 Typologies

The government positions are best understood by classifying them by type. These typologies will be used throughout the duration of the study.

**Negative Recognition** is when the government's recognition of the San is detrimental to the group.

**Non-Recognition** represents a silence on the issue. There may be government reports on the indigenous communities but with no attempt to address or remedy their situation; a government-issued survey in a particular region may be a demographic report of a community but not propose any action. It represents a tacit acknowledgement of their existence, yet stops short of recognizing their social marginalization.

**Non-ethnic Recognition** is when a government addresses indigenous peoples as a social group that exists and necessitates some governmental action, yet the action

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<sup>95</sup> For instance, all three countries have ratified the UN Covenant on Civil and Political Rights (1976) and the African Charter on Human and Peoples' Rights (1986) which address many of the San's types of claims in a human rights framework.

<sup>96</sup> For instance, South Africa's constitution refers to 'indigenous' in articles 6 and 26 in the sense of the pre-colonial era.

is addressed as a broader social policy rather than as community-specific. It is not important that the indigenous community is ethnically distinctive; they are grouped with any other people experiencing dispossession or marginalization.

**Recognition as an Ethnic minority** is when a government takes a San-specific approach in their statements and programmes. They directly target the groups as an ethnic group possessing a distinct common culture. The San community is considered alongside other ethnic groups within the country.

**Recognition as a Distinct Ethnic Minority** is when a government addresses the San as possessing a distinct culture different from other minorities. It may at times recognize the groups as an indigenous peoples, especially internationally. Their policy approach to the groups may target them as a distinct peoples and yet rarely invokes their indigenesness as the rationale for the action. Instead, it deems that they have a particular or 'special' status.

**Full Indigenous Peoples' Recognition** is when the government affirms that San are a distinct ethnic group with a particular indigenous peoples' status and they accord rights based upon this status. They target the groups with programmes deriving from their particular situation as an indigenous peoples in a manner distinct from how the government addresses non-indigenous groups. An indigenous peoples' position is in a sense a form of "affirmative action," whereby policies are created to target the special needs of minorities that have equal rights under the law but unequal capacity and skills to access those rights.

I will now present the government statements to the San based on these Typologies.

## **4.2 Government of Botswana San Position, Colonial Era (1885-1966)**

The San<sup>97</sup> of the colonial period in Botswana were essentially serfs in a feudal system to the Tswana pastoralists. They had been in regular, trade-driven contact with neighbouring Bantu language-speaking pastoralists for 2000 years, yet Tswana presence was mostly kept to the land on both sides of the current border along the Limpopo River.<sup>98</sup> By the 1800s, however, Tswana expansion into the previously San-

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<sup>97</sup> 'Basarwa' is the common term used for Botswana's San communities, however it is often regarded as a pejorative and San will be substituted instead unless quoting directly from a Botswana source.

<sup>98</sup> Saugestad, pg. 26, in Hitchcock and Vinding.

dominated territories resulted in a set of Tswana states that effectively rendered the San an underclass. Under Tswana law, Tswana and non-Tswana peoples enjoyed most of the same civil and political rights, whereas the San often belonged to Tswana families and could be passed over to other Tswana families, had no say in public affairs, and could not secure land.<sup>99</sup> Their rights were essentially only derivative of the rights allowed them by the Tswana family head who owned them. This situation is often related to slavery, whereby displaced hunter-gathering San eventually became socially disenfranchised herders for the pastoral Tswana tribesmen.<sup>100</sup>

With the entry of British colonial rule in 1885, the colonial administrators set to work with creating boundaries for the territories. Lands thus either became chiefdoms called Tribal Reserves, freehold lands, or Crown Lands. Tribal Reserves were created based upon the claims of the eight dominant Tswana groups, under which the San were subservient. Freehold lands were granted to white settlers and companies, whereby the San rights became nonexistent and much land was ceded, particularly for the San at Ghanzi Ridge. The remaining lands were granted to the Crown as the protector, upon which the San were tolerated but were in a tenuous situation because they were only able to exist under the will of the Crown.<sup>101</sup> The San thus legally were granted no distinct tribal or other land rights during the colonial period.

In addition to the legal system, Wily states two pieces of policy that typify the official government position on the San in the colonial era, both of which were reports by government commissioners to detail the conditions existing among the San. One was the Tagart Report (1934) that concluded that the San were indeed in a serf-like relationship with the Tswana pastoralists and suffered maltreatment without much response by the colonial government. The other major policy document from the colonial era was the Silberbauer Survey (1965), conducted by a Bushman Survey Officer—a new position created in 1958—that stated its aim was an attempt to assess how the San as the “most primitive element of the country’s population” might best “be included within the national life of the independent Bechuanaland of the

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<sup>99</sup> Schapera, Issac. *A Handbook of Tswana Law and Custom*. London: Frank Cass & Co. Ltd., 1970, pgs. 251-3.

<sup>100</sup> Wily, Liz. *Official Policy Towards San (Bushman) Hunter-Gatherers in Modern Botswana: 1966-1978*. Gaborone, Botswana: National Institute of Development and Cultural Research, 1979. pg. 8.

<sup>101</sup> Taylor, pg. 157, also citing Ng’ong’ola (1993) in Hitchcock and Vinding.

future.”<sup>102</sup> This report differed from the Tagart Report in that it signalled a shift in government interest away from solely political concern of the transitional government to more of “scientific”<sup>103</sup> interest that assessed their environmental and economic position and anthropological observations on San culture and religion. The colonial era for the San in Botswana save these assessments was an era of government silence until the tail end of the colonial administration. It is thus reflective of the British colonial approach to Botswana as a whole, wherein the colonial administrators tended to follow the existing ethnic group system rather than to alter it, and so were unconcerned with identifying the San as a distinct group from the Tswana land owners to which they were largely subservient.

This colonial-era discussion of the San exemplifies the Non-Recognition typology because it does little to address their particular situation.

### **4.3 Government of Botswana San Position, Post-independence Era (1966-1978)**

At independence from Great Britain in 1966, the San were not granted restitution of land that had been seized by the Crown under colonial rule. Under the 1968 *Tribal Land Act*, the independent government recognized only territories that the Constitution also recognized, which with the exception of the urban areas, freehold areas, and state land (formerly the Crown Land), was the land from the eight principal Tswana tribes from the previous system of the Tribal Reserves.<sup>104</sup> The San were thus excluded from any specific territory in independent Botswana.

The Government of Botswana did, however, directly address the San as a particular issue area. Notably, it examined the situation of the San under a filed paper in the Ministry of Home Affairs entitled “The Bushmen Problem,” thus underscoring the government’s outlook on the San issue.<sup>105</sup> The report emphasizes the marginalized nature of the San population as an outcome of master-and-serf like relationships

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<sup>102</sup> Silberbauer, George B. *Report to the Government of Bechuanaland on the Bushman Survey. Gaborone: Bechuanaland Government*, Feb. 1965, pg. 7.

<sup>103</sup> Silberbauer, pg. 7.

<sup>104</sup> Mazonde, in Hitchcock and Vinding, pg. 138.

<sup>105</sup> Hitchcock and Holm assert that the so-called Bushman problem simply means that for government officials, the ‘problem’ is that “Europeans and North Americans periodically discover that the Batswana are in one way or another grossly abusing and exploiting the San” and that each government, whether colonial or post-independence, is forced to respond to the outcry. Pg. 315. The “San issue” is defined for the purposes of this study in section 1.4.



between San and their “African” land owners, and that this unequal relationship has excluded the San from Botswana cultural development:

Because of their peripheral position in the life of the villages and the low regard in which they are held by their masters, these Bushmen are not exposed to effective acculturation processes. These factors, combined with their own backwardness and poverty, deny the Bushmen virtually all opportunity for advancement...<sup>106</sup>

The Bushmen Problem document was therefore significant in that it did recognize the San (Bushmen) as a distinct group in Botswana society and that it acknowledged their social problems, i.e. poverty. Nonetheless, clearly the overall message was that the root of the San's problems lay in their failure to be adapted into the dominant Botswana society. The prevailing attitude was that only by immersion into the lifestyle and the economic opportunities of Botswana society would the San be developed.

The primary document detailing the Botswana position towards the San upon gaining independence is a comprehensive assessment of the Bushmen Development Programme (BDP), 1966-78, that was produced immediately after the termination of the programme by a Botswana research institute.<sup>107</sup> The Programme's stated aim was to develop the San not as an ethnic or hunter-gatherer minority group but because they were underdeveloped citizens-in-the-making:

“It has become apparent that while the majority of Batswana have in recent years been able to take part in rural development, Bushmen citizens, by virtue of their different economic and social situation, have failed to develop along with the rest of the population...an interventionist programme should be undertaken on behalf of Bushmen...without this, the integration and assimilation of this minority cannot be expected to take place.”<sup>108</sup>

“...the programme is concerned only with Bushmen citizens, not for reasons of their different ethnicity, but for the reason that the unique hunter-gatherer background and history they share, has created conditions, attitudes and problems today unique to themselves, most of which...will require special assistance to be ameliorated.”<sup>109</sup>

The BDP even ‘extravagantly’<sup>110</sup> featured a Bushmen Development Officer (appointed in 1974) to directly implement government policy on the San. In addition

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<sup>106</sup> Ibid, pg. 19, quoting “The Bushmen Problem”: April 1966 H 15/4.

<sup>107</sup> I believe it is significant to note that the author of the document is in fact the former Bushman Development Officer herself and she was essentially the singular reason for that specific programme occurring at all.

<sup>108</sup> Draft Memorandum for the Bushmen Programme (May 1974), as quoted in Wily 1979 pg. 64.

<sup>109</sup> Section C II under Project Description, Draft III Bushmen Development Programme, as quoted in Wily 1979, pg. 66.

<sup>110</sup> Wily, Liz. “A Strategy of Self-determination for the Kalahari San: The Botswana Government's Programme of Action in the Ghanzi Farms,” *Development and Change*, Vol. 13, 1982, pgs. 291-308, pg. 300.

to the BDP, individual ministries and districts proposed a series of San-related development projects, which despite government approval were never implemented.<sup>111</sup>

The BDP ended under a swarm of criticism and increasing claims that it amounted to 'separate development' for the San, an intensely despised notion given the *apartheid* policies of its neighbouring South Africa.<sup>112</sup> This issue only added to a sizable number of constraints facing the BDP at every stage in its development. Implementation was minimal; by 1978 only 17 of 26 projects of the BDP had moved ahead in the intended format.<sup>113</sup> Eventually, government debate circled around the issue of terminology and few supporters remained to defend granting the San a specific programme. A non-ethnic-based policy was therefore recommended even by the Bushmen Development Officer herself, a policy then referred to as 'extra-rural dwellers' because she admitted that the negative public opinion of her office necessitated the change.<sup>114</sup>

In sum, the Botswana government shifted from the Non-Recognition typology of the colonial era to Recognition as an Ethnic Minority directly following independence. It acknowledged that the San (Bushmen) existed and that the government needed to respond to the social problems facing them. However, the approaches tended to be one of benevolence for the 'backward' San and the programmes were bent on assimilation into Botswana society.

#### **4.4 Government of Botswana San Position, Recent (1978-)**

In a dramatic shift, Botswana's current policy has been to group the San with other Batswana as part of its Remote Area Development Plan (RADP) that does not distinguish between ethnic groups but rather emphasizes social conditions. This policy replaced the BDP and was bent on the village-ization of the San, serving to

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<sup>111</sup> Wily 1979, pgs. 19-56. For example, the recommendations of the Ghanzi District Commissioner (1966) for a training centre and the Ministry of Home Affairs' Bushmen Training and Settlement Project (1967) were never implemented. Ostensibly, funding was an issue, though Wily cites this failure to act as a lack of political will.

<sup>112</sup> Wily 1982, pg. 300 and in Wily 1979 pgs. 187-90.

<sup>113</sup> Wily 1979, pg. 71.

<sup>114</sup> *ibid*, pg. 206.

'rectify' the San-specific BDP that seemed to isolate them. The *Botswana Daily News* reported in 1978 that:

"...under the (Bushmen Development) Programme, the Bushmen would remain in their unfavourable areas with little chance of integrating with other people, even though they would get some development projects built for them...It was desired to have a programme whereby it would be possible to group some of the people living in small scattered communities, into bigger villages..."<sup>115</sup>

Thus the RADP takes the view that the San are not a *special* ethnic minority group, but rather a collectivity of 'backward' underdeveloped Botswana citizens; therefore, there was no reason to devise a *special* policy for them distinct from other underdeveloped portions of the population.<sup>116</sup> Instead, the RADP aims its development efforts on the target group based on spatial location (remote areas outside of villages), sociopolitical status (marginalized), and socioeconomic status (impoverished).<sup>117</sup> The long-winded definition of the target group constituting RADP is essentially a list of these social descriptors:

All people living outside village settlements, who tend to live in small scattered communities and are sometimes mobile, covering large areas, tend to reside far from basic services and facilities...tend to be poor, lack adequate cash income or to be the most disadvantaged group in the country in terms of wage levels...tend to rely heavily on hunting and gathering as a source of livelihood...tend to lack livestock...tend to have no, or inadequate access to land and difficulties in getting land allocated to them...tend to be culturally and linguistically distinct, with another language than Setswana as their mother tongue...tend to have egalitarian political structures...tend to be a 'silent' sector politically, with no appointed leaders of their own and no representation in political bodies...<sup>118</sup>

Clearly, this approach to the San differs sharply from the BDP it replaced. Whereas the BDP did include some elements of social welfare, it included components of a broader notion of development such as rights to land and water and education.<sup>119</sup> The RADP eliminates such empowerment or rights-seeking components for the group of San peoples and instead changes focus to become a social policy targeting social marginality and poverty. That is, lifestyle factors of the San are seen as aberrations from the dominant Tswana society in a non-ethnic way, as a symptom of the San's rural marginality.

It does, however, note that there is a linguistic difference, which implies recognition of a separate group. In practice, governmental mention of that stated

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<sup>115</sup> Daily News 7<sup>th</sup> December 1978, No. 236, pg.3, cited in Wily 1979 pg. 209.

<sup>116</sup> Wily 1979 pg. 65.

<sup>117</sup> Hitchcock 1997, pg. 2.

<sup>118</sup> Botswana Ministry of Local Government: Lands Guidelines for the Economic Promotion Fund 1989, pgs. 6-7, As cited in Saugestad (2001), pg. 125.

<sup>119</sup> Saugestad, pg. 123.

linguistic difference being distinctively San is nonexistent. For example, a 1994 government report on education stated that drop-outs and substandard academic rates are highest among RAD dwellers,

...especially among the non-Setswana speaking ethnic RADs of the western (Kgalagadi and Ghanzi) and North West Districts for whom access to basic education has been limited due to poverty, distance from schools, cultural values and negative public attitudes.<sup>120</sup>

The “non-Setswana speaking ethnic RADs” are in fact San, yet no mention is made of this ethnic difference. The status of the San as an ethnic group has thus been silenced in favour of a non-ethnic approach to development. Given the ethnic-based approaches of apartheid occurring in the region, the Botswana government has attempted to differentiate between groups based strictly on non-ethnic indicators. In so doing, the legal conception of the Botswana government vis-à-vis the San is one that continually minimizes recognition of San as an ethnic group and instead sees them as impoverished, even ‘backward,’ citizens of Botswana. The RADP aims to be less politically controversial.

The government has consistently affirmed the non-ethnic policy that attributes San marginalization to their social factors such as their rural location. A Mission to Botswana by the African Court of Human and Peoples Rights (ACHPR) on the status of indigenous populations/communities reports the response of the meeting with the Special Advisor to the President as:

“...like all societies, the Botswana society included people who were marginalized...the people were marginalized simply because they lived in remote areas...(and) that Botswana was a country of one people irrespective of their origin, ethnicity and history and added that the word indigenous is separatist as all in Botswana were one.”<sup>121</sup>

Elsewhere, it has been indicated that this non-ethnic policy is ultimately a result of the perspective that the San lifestyle is less ‘modern’ and therefore excluded from enjoying development. Current President Festus Mogae reportedly used this animal imagery in describing the San:

How can you have a Stone Age creature continue to exist in the age of computers?... If the Bushmen want to survive, they must change, otherwise, like the dodo, they will perish.<sup>122</sup>

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<sup>120</sup> Evaluation of the RAD Programme, Government of Botswana, cited in Mazonde, pg. 140 in Hitchcock and Vinding.

<sup>121</sup> ACHPR Report, pgs 20-21, quoting Sidney Tshepiso Pilane.

<sup>122</sup> Cited in Monbiot, George, “Who Belongs to Another Age?,” *Mail and Guardian* online, Africa section, Analysis. 28 March 2006.

He thus exemplifies the government perspective of the San as a part of the population lagging behind the benefits experienced by the (Tswana) majority.

Clearly, the Botswana government conception of the San is starkly different than that touted by the San and their advocates in the NGOs, academics, and the international norms on indigenous peoples described in the previous chapter. Hitchcock and Holm demonstrated that the post-independence government of Botswana increasingly places the San under bureaucratic control and that the policies and current government position remains one of economic and cultural domination, calling their policies but a 'carrot' to entice the San to resettle in places where the government can assert its authority.<sup>123</sup> The policies and programmes of the Government of Botswana have repeatedly failed their original objectives and the government is often accused of only creating the programmes as a reactionary response without long-term commitment to the San at the core.

At the international level, Botswana continually asserts the sentiment that "all Africans are indigenous," as it did in the 2005 reports to the ACHPR and to the 2006 deliberations on the Draft Declaration on the Rights of Indigenous Peoples and does not refer to the San specifically in its international statements. For example, as mentioned, Botswana took a leading role in voting to 'defer consideration' on the Draft Declaration and raised a number of objections,<sup>124</sup> such as that it is antithetical to Botswana's non-ethnic state model, that it threatens territorial integrity, and that it would improperly threaten resource rights of the state. In January 2007 Botswana again took a leadership role at an African Union summit and introduced discussion on the Draft Declaration and again raised its concerns to the African heads of state. It called the Draft Declaration a "recipe for chaos"<sup>125</sup> and lead the charge for African states to adopt a common position against it, again citing that it was more important to protect territorial integrity.<sup>126</sup>

Botswana has scant but significant domestic examples that do signal an approach to the San as an ethnic group. One is that in 2000 one San member<sup>127</sup>

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<sup>123</sup> Hitchcock and Holm, throughout, esp. pgs. 325, 331.

<sup>124</sup> See Section 3.1.2 for excerpts from Botswana's UN statement.

<sup>125</sup> Botswana Press Agency (BOPA), "AU Makes Strides," *Botswana Daily News* online, 29 January 2007. Accessed at Government of Botswana website, <<http://www.mcst.gov.bw/dailynews/index.php>>

<sup>126</sup> African Union. Decision on the United Nations Declaration on the Rights of Indigenous Peoples. Doc. Assembly/AU/9 (VIII), Add. 6.

<sup>127</sup> Namely, Chief Rebecca Banika.

entered the House of Chiefs. Also, the government of Botswana hosted an (externally-funded) Conference on Development Programmes for Africa's San/Basarwa Populations in Gaborone in September 1993, wherein the San expressed their views primarily on land and cultural issues, and passed many resolutions to gain more ownership over these rights. However, the San House of Chiefs member has been criticized for not having much contact with the San.<sup>128</sup> Also, as of 2004 none of the resolutions from the conference had been implemented.<sup>129</sup>

Botswana, particularly as a rebuke of South Africa and Namibia's devastating struggles with apartheid, maintained a firm policy of a non-racial, non-ethnic homogenous state upon gaining independence in 1966. The consequence of this policy framework has been that Botswana's effective dismissal of San ethnicity has meant the domination of Tswana people yet a purported equality for all. Tswana peoples post-independence have become not only the majority population and the dominant political force of Botswana but the very standard. For instance, Botswana's insistence on denying the San status in favour of the generic categorization as a Remote Area Dweller consistently posit the "Bantu" Batswana as the norm, the "Basarwa" Batswana as the variation. The RAD definition's negative socio-economic characteristics emphasise what the San communities do not possess: "(living *outside* villages, *not* speaking Setswana, *lacking* access to water, land, livestock, and *not having* political organization)"<sup>130</sup> instead of emphasizing the alternate attributes they do possess such as their own local forms of authority.

Most fundamentally, the policy direction of the Botswana government vis-à-vis the San is one of "quiet diplomacy."<sup>131</sup> It is one of reactionary statements issued after inquiry is raised about the San that always emphasizes that the San must be treated as equals to other Batswana, and they propose plans to improve the situation. The BDP and RADP are the major efforts the government undertook to tackle the 'Bushman problem,' and each have been met with major criticism that they represent paternalistic and assimilationist attitudes that continue to fail the San. Thus, despite the explicit policies or government rhetoric surrounding the San issue, the government of Botswana's approach to the San has continually implicitly scorned the notion that

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<sup>128</sup> Mazonde, pg. 138, in Hitchcock and Vinding.

<sup>129</sup> *Ibid*, pg. 137.

<sup>130</sup> Saugestad, Contemporary Perspectives, pg. 16 (author's emphasis retained).

<sup>131</sup> Personal communication with director of SASI.

the San are an 'indigenous peoples' (in the international sense) and have not taken active steps to accord them a particular status as such.

The RADP represents a shift to the Non-Ethnic Recognition typology because it does not approach the San as an ethnic group but rather simply as rural dwellers.

#### **4.5 Government Response of Namibia to the San, Colonial Era (1884-1990)**

As indicated, the response of the Botswana government can be understood in part as a reaction to the policies of the Namibian colonial government. By the time of German colonial rule in what was then South West Africa, the San had already experienced social stratification similar to the San in Botswana. They were locked into a subservient relationship with the non-San pastoralist peoples. While it can be said that the San were already socially marginalized prior to the onset of colonialism, the colonial administrative rule continued and heightened the existing social structures. During the colonial era, administrators did not always have a coherent policy and did not have as explicit San policies as the Botswana case. Gordon classifies the Namibian policy towards the San as a conglomeration of grossly inconsistent rhetoric aimed at a varied audience, such as "farmers, police, magistrates, mine owners, missionaries, and migrant workers" but never the San themselves.<sup>132</sup> The approach to the San was often implicit and was based upon their view that the San were an innately substandard people.

For example, a common view of the San treated them as part of the fauna rather than as an ethnic group on par with the more socio-economically dominant groups. Suzman characterizes the colonial administrators' view of the San as 'wild game,' making up part of the landscape to be colonized and, as such, appropriated San territories.<sup>133</sup> Under colonial rule, both German and South African administrations believed the San populations were on their way to becoming extinct because of their inherent inferiority compared to other segments of the population. Though the brutal

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<sup>132</sup> Gordon, pg. 89.

<sup>133</sup> Suzman, MRG, pg. 22.

treatment of the San by German colonial administrators is well documented,<sup>134</sup> overall they did not bother with an explicit policy and were more concerned with quelling the Otjiherero- and Nama- speaking groups that posed more of an overt threat to their regime.<sup>135</sup>

San policy under colonial rule shifted more dramatically when South Africa gained—via a League of Nations ruling—full control of South West Africa at the end of World War I and San suffered the greatest loss of rights and land under this administration. Its “Native Policy” included setting up a Native Reserves Commission (1921) that had at its base segregated land arrangements where the administrators assigned the various ethnic groups to reserves or “homelands.”<sup>136</sup> For the San, this resettlement became an encroachment that brought an end to any remaining hunting lands. The San were largely pastoralized or, as in Botswana, forced into serf-like situations akin to servitude. Land dispossession, which increased in scale during the late 1960s and 70s, meant that remaining areas where San populations lived became ‘communal land’ that belonged to other authorities.<sup>137</sup> Without a land base, the San effectively became dependent upon their neighbours, suffered extreme marginalization and social stigma, and became an ‘underclass.’<sup>138</sup>

The vast majority of San were not granted any land rights until the eventual establishment of Bushmanland as one of the ten ‘homelands’<sup>139</sup> in 1964, a move that was of benefit for !Kung and Ju |’hoansi San. The establishment of Bushmanland can in a sense be viewed as a government position of Recognition as an Ethnic Minority, since it recognizes the San as an ethnic group. However, under the apartheid context under which the establishment of Bushmanland was created, it is more appropriately understood as the Negative Recognition typology, a racially-based apartheid act (modelled after the Bantustans of South Africa) rather than as a move by the South African forces to promote San development.

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<sup>134</sup> See Gordon, and ‘Hottentot’ section of Silvester, Jeremy and Jan-Bart Gewald’s *Words Cannot be Found: German Colonial Rule in Namibia: An Annotated Reprint of the 1918 Blue Book*. Leiden, the Netherlands: Brill, 2003.

<sup>135</sup> Suzman Assessment, pg. 5.

<sup>136</sup> Gordon, pgs. 119-135.

<sup>137</sup> Suzman, MRG, pg. 22.

<sup>138</sup> Gordon, throughout. Also Wilmsen (1989) demonstrates throughout that the modern appearance of the San as dispossessed isolated peoples are actually recent products of this long process that coalesced into the colonial era.

<sup>139</sup> One ‘homeland’ was created for each major ethnic grouping, i.e. Kaokoland, Ovamboland, Kavangoland, East Caprivi, Damaraland, Bushmanland, Hereroland, Rehoboth, Tswanaland, and Namaland. Tswanaland was later eliminated.



There are other elements of a special interest in the !Kung San in the Bushmanland area by the South African government. Lee<sup>140</sup> characterizes the South African policies towards the San after the creation of Bushmanland as occurring in two phases. First, the South Africans supported church engagement in missionizing efforts with the San extensively until 1975. These efforts gained few converts but, more significantly, resulted in the development of more government and San contact and linguistic knowledge. A second phase then occurred when the government began extensively recruiting the San into the South African Defence Force (SADF) in order to combat the armed liberation South West African People's Organization (SWAPO), which had been gaining more progress in its struggle. The economic benefits of participating were massive, and by 1978 some 40 percent of the adult male population of the !Kung were enlisted.<sup>141</sup> Participation and settlement into the battalions continued throughout the 1980s. The enlistment, which also included !Kung from neighbouring Angola and Botswana, was widely touted as a civic action programme of the SADF and regularly issued such statements:

Deep in the dense Caprivi bush a colony of Bushmen are being taught a new culture and way of life by the White man. More than a thousand Bushmen have already discarded the bow and arrow for the R1 rifle and their wives are making clothes out of cotton instead of skin.... They now have "braavleis" and salads with salt and pepper while the men wear boots and their ladies dress in the latest fashions... It is an open camp and the people may come and go as they please, but most of them prefer to stay.<sup>142</sup>

The approach to the San, though under the stated guise of development in such propaganda, is more appropriately identified as an effort by the SADF to fulfil its needs for loyal black allies in Namibia.<sup>143</sup> Hence, such South African government interest in the San during the end of the colonial era is difficult to neatly typologize, since it has a stated approach to the San that would outwardly indicate Recognition as an Ethnic Minority but its reality of an apartheid-based racial superiority approach therefore distorts the position and renders it most appropriate as a Negative Recognition typology.

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<sup>140</sup> Richard Lee is a well-known anthropologist who has worked in the !Kung San area over the course of three decades.

<sup>141</sup> Lee, pg. 94.

<sup>142</sup> *Windhoek Advertiser*, 23 September 1977, cited in Lee, pg. 93.

<sup>143</sup> *ibid*, pg. 97, citing examples of army propaganda such as "A Bushman's hate for SWAPO will give you the shivers..." *Durban Sunday Tribune*, 1 March 1981. Lee characterizes the idea that the government had noble development efforts at the core of the SADF conscription a "cruel joke," pg. 91.

## **4.6 Government Response of Namibia to the San, Post-independence (1990-)**

The colonial-era approaches to the San are reflected in the government position on the San in the independence era. For example, the conscription of the San as soldiers in the SADF has often led to distrust in them, and the government has at times referred to the San as “traitors” for their participation.<sup>144</sup> Also, Bushmanland has morphed into a new form: It is now Tsumkwe District, a “communal area” where, as with the rest of the country, San are allowed “communal land rights” along with at least 11 other ethnic groupings in Namibia rather than a particular form of “indigenous land rights.” Some ten percent of San actually have attained land rights in this Tsumkwe District. Experts in the region indicate that this is because in effect the “communal land” is not equitable across the groups the government recognizes; since the San are politically the weakest and do not typically engage in cultivation, they are often the most vulnerable to displacement.<sup>145</sup>

The Namibian Constitution avoids the terminology ‘indigenous,’ tribal, or ethnic groups in favour of ‘traditional communities’ under the 2001 Traditional Authorities Act (TAA) that is intended to encompass all of Namibia’s pre-colonial ethnic groups.<sup>146</sup> The TAA defines a traditional community as an:

‘indigenous homogenous and endogamous social grouping comprising families deriving from exogamous clans which share a common ancestry, language, cultural heritage, customs and traditions, recognizing a common traditional authority and inhabits a common communal area and includes members residing outside the common communal area.’<sup>147</sup>

Because of the stipulation that groups inhabit a communal land area, indigenous groups are largely left out of the scope of the TAA, for, as mentioned, few were granted land rights in communal areas during the colonial era. To date, four of the six Namibian San traditional authorities have been officially recognized and included in the Traditional Authorities leadership structure.<sup>148</sup>

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<sup>144</sup> IWGIA 2006, citing then-President Nujoma.

<sup>145</sup> Harring, pgs 70- 73, in Hitchcock and Vinding.

<sup>146</sup> Suzman, Minority Rights Group International, pg. 11.

<sup>147</sup> *Ibid*, pg. 12.

<sup>148</sup> ACPHR Namibia, pg. 72 and Suzman Assessment, pg. 104, updated by personal communication with WIMSA. Those with recognition are the Hai||om TA in Outjo and the !Xōó TA in Omaheke South, the !Kung TA in Tsumkwe West and the Ju’hoansi TA in Tsumkwe East.

Despite such inherent problems in the TAA from the San perspective, the TAA is inherently also favourable to many ethnic minorities in Namibia. The fact that the policies recognize land as a part of the heritage and identity of ethnic groups and allow power to traditional authorities that had been diminished in the colonial era is beneficial to some groups such as the Herero. The roots of San marginalization and land dispossession, however, largely predate the colonial era policies and the San are often left out of the current policies that uplift other ethnic minority groups. That said, the fact that the government recognizes the San as one of its ethnic groups is significant; for example Namibia has adopted a first-language ('mother tongue') learning during the first three years of schooling for all language communities, and the San would thus be included under this scheme.<sup>149</sup> The TAA and San-specific policies fit the recognition as an Ethnic Minority typology.

Then-president Nujoma opened the 1992 *Regional Conference on Development Programmes for Africa's San/Basarwa Populations*<sup>150</sup> by stating the Namibian government position as affirming that the San community is already protected by the Namibian Constitution. However, he notes the *distinctive nature* of their marginalization:

"...we agree that there is a peculiar problem confronting the San people today...when we delve into our past to gauge where we are at present we are usually accused of blaming everything on colonialism. However, in the case of the San people it is fair to say that these original inhabitants of Namibia were disposed of their former hunting fields by the later wave of communities and settlers who entered our country. Furthermore, their traditional way of life was destroyed by their introduction to the modern economy...The Namibian Government is aware of the dire plight of the San community and has made their development and social uplifting a priority..."

The President thus acknowledged the particular situation faced by the San as 'original inhabitants' but stops short of deeming them an 'indigenous peoples' according to the international term. It has more recently publicly expressed concern at the living conditions and oppression that the San face in relation to other ethnic groups.<sup>151</sup> This position is the Distinct Ethnic Minority typology. The NGO Working Group of Indigenous Minorities of Southern Africa (WIMSA) indicated that the government will recognize that the San are 'indigenous' to Namibia in such political rhetoric and will acknowledge that they are the most marginalized group in Namibia today, but

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<sup>149</sup> Suzman, MRG, pg. 14.

<sup>150</sup> Held 16-18 June 1992 in Windhoek. Verbatim of original text published in Suzman Regional Assessment, pgs 155-6.

<sup>151</sup> Deputy Prime Minister Libertine Amathila undertook a visit to several San communities in 2005 and publicized her concern. Cited in IWGIA 2006.

that it is far from ratifying the key international conventions ILO #169 or the UN Draft Declaration that put this recognition into a system of rights.<sup>152</sup> Both the government and the NGOs also point to the fact that one San is an MP, Royal JK Ui/o/oo, and that other San are represented at the national level as Traditional Authorities as evidence of San political representation. San political representation therefore points to a level of recognition of their existence and their rights.

The government of Namibia, unlike Botswana's current policy, has instituted projects aimed directly at the San specifically as a San minority community. The Ministry of Lands and Resettlement, by its own recognition, has instituted development projects aimed in a general sense at marginalized communities but particularly for indigenous communities; the Ministry worked with four projects with San communities in the Caprivi, Omaheke, Ohangwena, and Omakoto Regions.<sup>153</sup> Whilst the Namibian government policy primarily aims to uplift any marginalized communities, it was the policy at least in this Ministry to conduct special programmes to face the particular situation of indigenous communities, namely the San, because of their "historical disadvantaged situation."<sup>154</sup> These programmes represent the Distinct Ethnic Minority typology.

However, again, NGOs largely disagree with the efficacy of the programmes, claiming that most of the San-specific attempts are ill-managed, operating under hollow ideals. They pointed out that most of the San settlements were primarily non-San, most San leaders were not officially recognized by the government, and that the San resettlement policies rendered the San highly dependent upon government welfare.<sup>155</sup> They assert that four of six San communities do not control their ancestral land that is now communal or commercial farmland, and that these San are employed as labourers, receiving far less than the Namibian minimum wage, yet the government does not respond to the issue.<sup>156</sup> San are also nonexistent at the local governmental level. Similar to the case of Botswana, a major criticism levied is that Namibian policy towards the San is largely political rhetoric, likely created to placate the

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<sup>152</sup> Personal communication with co-ordinator of WIMSA. For explanation of the international conventions see previous chapter. Government reasons for objecting the conventions, which are written on the basis of an indigenous peoples status, are discussed in Chapter 3.

<sup>153</sup> ACHPR Namibia, pg. 28, reporting on meeting with Lea Nomola, permanent secretary of the Ministry of Lands and Resettlement.

<sup>154</sup> ACHPR Namibia, pg. 29.

<sup>155</sup> ACHPR Namibia, pg. 30-1.

<sup>156</sup> ACHPR Namibia, pgs. 63-4.

international attention around the San rather than to bring about substantive changes.<sup>157</sup> It must be noted then, that NGOs and San advocates dispute the intentions and efficacy of the government policy towards the San. However, it is still possible to classify the overall government policy as more San-specific than Botswana's non-ethnic policies.

Namibia thus recognizes ethnic differences and constructs a policy base that allows each ethnic group a degree of ethnic heritage-based rights. The San are recognized as a distinct ethnic group with a particular historical pattern of marginalization and the government has therefore instituted specific programmes to address their situation. Namibia particularly has taken an interest in protecting and promoting San languages, an indicator that Namibia views the San as a particular ethnic group.<sup>158</sup> However, the government remains wary of deeming the San explicitly an 'indigenous peoples' according to the international standards. Rather, Namibia's approach in the post-independence era is best typologized as Recognition as an Ethnic Minority. The policy direction in post independence Namibia has increased San participation in the government and targeted them as one of the country's ethnic groups with its own set of particular socio-economic problems.

#### **4.7 Government of South Africa Response to the San, Colonial Era (mid 1600s-1994)**

Similarly to Botswana and Namibia, South Africa's history of settlement meant that certain hunter-gatherer lifestyles as typified by the San were marginalized and agriculturalist lifestyles were favoured. Through uneven trading, cattle was lost in exchange for non-subsistence goods such as tobacco, alcohol, and beads<sup>159</sup> and the San communities became labourers for the European settlers.<sup>160</sup> Dr. O. Dapper describes (1668) a war between his Dutch and the "Hottentot" indigenous peoples

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<sup>157</sup> Personal communication with co-ordinator of WIMSA.

<sup>158</sup> The government participated in a June 2005 "Mother Tongue Conference" to develop San mother tongue education, and the Directorate of Adult Basic Education supported a 2005 Literacy Programme for the Khwe in West Caprivi. IWGIA, 2006.

<sup>159</sup> See the accounts of Dapper and Ten Rhyne, translated in Schapera and Farrington, pgs. 109, 135-7.

<sup>160</sup> Described in the account of Grevenbroek (1695), throughout, translated in Schapera.

they encountered in 1659, which was the first element in an overall process of loss of pasture land and political subjugation. Upon winning the skirmish, the Dutch settlers asserted that: “your people have now once for all lost the land around the Cape through war, and you must accordingly never dwell on the idea of getting it back again through peace or through war.”<sup>161</sup> Hence, the many indigenous groups encountered by the settlers between the 19<sup>th</sup> and 20<sup>th</sup> centuries became dispossessed of their lands with their livelihoods and cultures equally transformed. This position is the Negative Recognition typology.

By the 1900s, the San situation had resulted, from an anthropologist’s view, in “total disintegration” of the tribes and that “...naturally all semblance of their original culture and tribal groupings has long since vanished.”<sup>162</sup> Save an 1809 Hottentot Proclamation that regulated the use of Khoisan labour, government policy was uninterested in the San. Though clearly the San existed, to the South African governing bodies they posed no threat and were treated as part of the general matter of what was termed the Native Question. This position is the Non-Recognition typology.

Interest in the San as a specific ethnic group was briefly renewed in the 1920s when Donald Bain attempted to obtain a piece of land for San peoples in the form of a Reserve. The land he requested from Parliament was on the Kalahari Gemsbok National Park which was historically San-occupied but that had been surveyed as a white farming area.<sup>163</sup> Save this isolated case—which failed—the San largely were relegated to a period of silence in government policy and discussion. San peoples were not part of government policy until the 1950s following the election of the National Party in South Africa and the resultant apartheid policy which necessitated a categorization of them. Under the Group Areas Act, San people most often became subsumed into the category of “Coloureds” and were relegated to homelands in the Northern Cape. In so doing, the government was tacitly denying them the existence of distinct San communities, silently sweeping them into an amorphous and foreign social classification as rural coloureds where they experienced severe conditions in isolated areas.<sup>164</sup> This Non-Recognition situation dominated their existence for the

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<sup>161</sup> Dapper, in Schapera, pg. 17.

<sup>162</sup> Schapera, pg. xiv.

<sup>163</sup> Robins, Madzudno, Brenziger in Suzman Assessment, pg. 6 of vol. 2.

<sup>164</sup> *Ibid.*

entire apartheid era and the non-status was the reason for the lack of social cohesion or social activism amongst San peoples. However, many retained close community ties as Coloureds rather than as San, and at least for one group this close community association was a factor in their later mobilisation.<sup>165</sup> Other groups that had been grouped into Afrikaans-speaking Coloured areas, such as the Khoe-speaking Nama, have similarly experienced a repressed cultural identity that they have reasserted<sup>166</sup> in a stronger way than the Khomani, Khwe and !Kung San in South Africa. All told, the apartheid era exemplifies the Non-Recognition typology.

#### **4.8 Government of South Africa Response to the San, Post-independence (1994-)**

The policy direction of South Africa towards the San in the post-independence era can be read against the backdrop of the apartheid regime. San peoples continue to reel from the apartheid legacy in a way that affects their current non-status and marginalization. In the apartheid era, little concern was taken for the situation of the San and they were simply denied a recognition by the government as a distinct peoples. They were not part of the Group Areas Act and were denied a status in the national and local levels, in government and across the range of social services. This means that today, because they have not been formally and explicitly recognized by the South African government, they are denied rights and access to legal channels. For example, in the Northern Cape, because the San are either grouped as “coloured” or “African” or even “Other” in the official statistics, the numbers obscure their real position; “Africans” are deemed the poorest population of the province even though they often have higher incomes than San residents.<sup>167</sup> Therefore, the San fail to receive the particular attention and government welfare they would receive if their real economic situation was tabulated as a San community.

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<sup>165</sup> The Khomani San in the Richtersveld area had been subsumed into a Coloured community and have subsequently voiced their common claims in the successful Khomani San Land Claim, as described.

<sup>166</sup> Robins documents the Namaqualand land struggles of the 1980s where community activists in the Northern Cape largely based their calls for communal land tenure (rather than individually owned units) upon the argument that communal tenure was a Nama tradition, in *Borderlands*, throughout.

<sup>167</sup> ILO Report, pg. 24.

As the government has become increasingly human rights-friendly, the San have risen in prominence in the government policy structure and the government has committed itself to aligning itself with the international indigenous peoples norms more than any other African country. SASI characterizes the government approach to the San in the post-independence era as one of “skittishness” about acknowledging San culture, but that as the ‘Rainbow Nation’ ideal of unity in diversity has developed, the government has been increasingly favourable to including the San as an ethnic community.<sup>168</sup>

For instance, the San are at times pointed to as adding to the diversity of the country because of their ethnic distinctiveness, as then-President Mandela remarked in 1997 at the Khoisan Identities and Cultural Heritage Conference held in Cape Town:

...by challenging current perceptions and enriching our understanding of Khoisan cultural heritage, this conference will contribute to the renewal of our nation, our region, our continent.<sup>169</sup>

Further, it has adopted aboriginal title into its laws which recognizes the land rights of the indigenous people occupying the land at the time of colonization.<sup>170</sup> As of November 2004, it has also committed itself to drawing up an official policy on recognizing “vulnerable indigenous communities.”<sup>171</sup> It has also enshrined San, Nama, and Khoe language rights as part of its 1995 Pan-South African Language Board (PanSALB),<sup>172</sup> an indication that the government recognizes the existence of these peoples, their endangered languages, and the need of particular protection. The government has also appointed a Khoe-san<sup>173</sup> as one of the 16 members of the UN Permanent Forum on Indigenous Issues. These efforts match the Recognition as a Distinct Ethnic Minority typology because they target the particularities of the San.

The government remains proud of its leadership in their recent efforts towards San development and is increasingly willing to participate in international-level discussion on the San. The Department of Constitutional Development (DCD) has declared its willingness to work towards constitutional accommodation for indigenous

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<sup>168</sup> Personal communication with director of SASI.

<sup>169</sup> Chennells and DuToit, pg. 100, in Hitchcock and Vinding.

<sup>170</sup> See Chan in Hitchcock & Vinding, pg. 115.

<sup>171</sup> ILO Report, pg. 2.

<sup>172</sup> PanSALB is an independent body established to oversee language rights.

<sup>173</sup> William Langeveldt (who self-identifies as Khoe-san).



peoples in South Africa.<sup>174</sup> From as early as 1998, the DCD held conferences on determining the Constitutional position of groups such as the San, which collectively they termed “communities who view themselves as indigenous.”<sup>175</sup> The government invited a high-profile UN Mission to South Africa in 2005 to study the situation of the San.<sup>176</sup> An Inter-Departmental Working Group on Khoe and San Issues began in 2005 and reports directly to the Cabinet and the President’s office.<sup>177</sup> Also, the government has expressed pride in the recent *hoodia* intellectual property case that resulted in a royalties agreement for a patent put on San indigenous knowledge because it distinguishes the country as a leader in traditional knowledge legislation.<sup>178</sup>

Unlike Botswana and Namibia, South Africa is more likely to speak, particularly in international settings, about the San in a specific way as a distinct ethnic minority group. For instance, the South African Minister of Justice and Constitutional Development addressed the UN Office of the High Commissioner for Human Rights’ (OHCHR) Committee on the Elimination of Racial Discrimination in August 2006 in Geneva with the statement that:

South Africa recognises and protects minorities i.e. the Khoi-San. They have different languages and culture and we honour them in our coat of arms. The symbols and languages used promote their artefacts within our industry and we are assisting in developing their rights.<sup>179</sup>

Her direct acknowledgement at the international level of the San is significant. It acknowledges the San’s present existence, their distinct language and culture, and signifies the government aim to target this distinct group with a special focus.

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<sup>174</sup> ILO Report, pg. 23.

<sup>175</sup> *Ibid.*

<sup>176</sup> The invitation was given by the Minister of Foreign Affairs, Nkosozana Dlamini Zuma. The visit was the first time an African country has officially invited the Special Rapporteur to report on the situation of indigenous peoples. Cited in IWGIA 2006, pg. 514.

<sup>177</sup> The Working Group is a Pretoria-based forum composed of civil servants from several ministries to review policy and issues related to Khoe and San peoples. Cited in IWGIA 2006, pg. 516.

<sup>178</sup> Personal communication with Roger Chennells. The *hoodia* is an indigenous plant that the San traditionally used, amongst other purposes, as an appetite suppressant to survive the harsh conditions of the Kalahari desert. The plant was subsequently harvested and researched by the South African Council for Scientific and Industrial Research (CSIR), which obtained a patent without the consent of the San. The rights were eventually licensed to the Unilever corporation to sell in the form of a diet pill. The case, largely instigated by NGOs and also the South African San Council, resulted in the awarding of royalties to the San and spurred the South African government to rework its laws on biodiversity and protection of traditional knowledge.

<sup>179</sup> Mabandla, Brigitte. Presentation of the Republic of South Africa’s Initial Report to the Committee on the Elimination of Racial Discrimination. Geneva: Office of the High Commissioner on Human Rights, 4 August 2006.

The post-independent government has also had a role in San collective identity. Most accounts point to the successful 1999 Khomani San land claim as the most overt San issue at the governmental level as well as the marking the wellspring of San collective identity and activism described in the previous Chapter.<sup>180</sup> In the Khomani San land claim process, the government responded to the high-profile case in a way that did not acknowledge the San as an indigenous peoples or particular ethnic group, yet it thrust the San issue into the government agenda precisely at a time when human rights movements were rippling across the country. Also, independence meant that recognition of “indigenous peoples” like the San suddenly became more politically valuable and advantageous in asserting a new national non-colonial identity. Robins argues that the 1994 elections saw ANC activists combining colonial conquest and land dispossession with a broader national liberation narrative.<sup>181</sup> A prominent ANC leader of the time professed that:

“...the struggle against White people, or the struggle against injustice, isn’t a struggle which began yesterday. It is a struggle which began when we lost our culture and our land, when we lost our cattle, and when we lost our humanity. And that’s what happened when they came to take over our land.”<sup>182</sup>

Whether a political pawn or a subject of social welfare programmes (or both), the San have gained increased political attention in the independence era.

The government efforts in promoting the San are contradictory, however. Whilst the policy and programmes are Recognition of a Distinct Ethnic Minority typology, and at times are indicative of the Full Indigenous Peoples’ Recognition typology, the approach is inconsistent. The government is not party to the major international conventions on indigenous peoples and most government rhetoric that makes reference to indigenous peoples still defines indigenous in the sense of all South African groups that predate the arrival of minority European settlers.<sup>183</sup> The

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<sup>180</sup> Chennells, for example, in personal communication, verifies that the land claim was finalized in 2002 but states that this was amongst the earliest efforts based upon San as a peoples. Chennells and Nigel Crawhall had worked to seek out the San communities that had been invisible in the apartheid era. Based largely upon languages, Crawhall’s research determined that distinct groups remained and eventually the San-related NGOs of WIMSA, SASI, and IPACC emerged in the 1990s. The Khomani San land claim brought major attention to the San situation because, although not waged upon San in law because their colonial dispossession of land predated the 1913 cut-off date for loss of land by the apartheid government, nonetheless highlighted the San marginality and drew considerable domestic and global attention.

<sup>181</sup> Robins, *Borderlands*, pg. 15.

<sup>182</sup> *Ibid*, quoting C. September speech, February 1994, pg. 17.

<sup>183</sup> For instance, the 1996 Constitution uses ‘indigenous’ twice: in Chapter 1, Article 6(2) when concerning the “historically diminished use and status of the indigenous languages of our people” and

San are also not part of National House of Traditional Leaders which advises the government on the role of traditional leaders and customary law. Despite the overall government failure to fully recognise the San as an indigenous peoples, it has considerably attempted to formulate a standard policy for the San in the post-independence era.

The government has at times favourably participated in international-level events concerning indigenous peoples. Along with the country's demonstrated progressive commitment to human rights in the post-independence era, the San issue has transformed into a human rights concern to which the government has increasingly recognized.

#### **4.9 Categorization of the Responses**

Moving beyond detailing the government approaches in the three countries towards the San, these responses can be compared and classified.

The nature of the government responses have been, as demonstrated, divergent:

**Botswana** immediately following independence allowed fairly radical changes towards the San in targeting them with the Bushmen Development Programme. After the failure and termination of this programme in the late 1970s, however, the government changed its approach stopped dealing with the San as a specific ethnic minority group; rather, the Remote Area Dweller Programme grouped San development issues along with those of any other isolated impoverished Batswana according to social (non-ethnic) factors. I categorize this position as Non Ethnic Recognition.

**Namibia's** policy direction to the San in the post-independence era has recognized the San as an ethnic minority group and approached them with policy that attempts to recognize this particular status. However, the San were not overtly acknowledged as an "indigenous peoples" with especial rights; rather, they are identified as one of the most marginalized of Namibia's multiplicity of ethnic groups. I categorize this position as Recognition as an Ethnic Minority.

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Schedule 6, Article 26 in reference to an "indigenous law," referring to indigenous in the sense of local and customary.

**South Africa** has engaged in discussion with international institutions and indigenous rights practitioners to recognize the San as an “indigenous peoples” in a manner that is distinct from the other ethnic groups. The South African government has attempted in its recent independence period to realize the distinctive quality of the San dispossession and marginalization and to reconcile their apartheid experience which had grouped the San into “Coloured” group areas. It has increasingly discussed the San as linguistically and culturally different group for which government policies should be specifically tailored. I categorize this position as Recognition as a Distinct Ethnic Minority.

This chapter has outlined the data on government policy direction to the San and demonstrated that these policy directions can be classified into typologies of their government position. Now, an added dimension can be asserted. *What can account for the changing government responses?* The following chapter will address this key question.

## **Chapter 5: Analysis and Conclusions**

Given the international movement described in Chapter 2 and the government positions toward the San in Chapter 3, what connections can be made between the two? It is now possible to address the research question at hand of precisely *what* it is that can account for why the three states react differently at different times towards the San issue. This chapter will draw upon the data in Chapter 3 and assert that the international movement of indigenous peoples is the primary factor for the government policy direction of Botswana, Namibia, and South Africa towards their recognition of the San as an indigenous peoples.

### **5.1 Presentation of the Trend in Government Policy Direction to the San**

It can be determined that the government responses to the San depicted in the five *Typologies* are actually indicative of a trend in the government policy direction.

During the colonial era, administrators most often denied the San recognition beyond 'otherness' or servitude, typologized as Non Recognition or at times as Negative Recognition. During the independence movements, the San received greater focus as a policy area as the fledgling governments were more willing to formulate an approach to the San along with burgeoning swell of social policy. Each new democracy addressed the San as a specific issue area and issued statements and policies targeting San as an ethnic community (although the exact terminology "indigenous" was not necessarily used). They have each taken different approaches that correspond with either Non-Ethnic, Ethnic Minority, or Distinct Ethnic Minority typologies. It is only in this post-independence era that the three states have made significant changes in their San policy. The sequence of the responses is similar in that the post-independence era hearkens the greatest shift in approach to the San. Although as described the specific typology of the San policy differs across the three polities, the sequencing is the same: the major momentum of addressing the San as an issue area immediately follows independence.

The Typologies can now be developed into a continuum that demonstrates a trend in government policy direction, as shown in Table 2, where the typologies are ordered by increasing degrees of recognition.

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**Table 2: GOVERNMENT RECOGNITION OF SAN: Continuum of Typologies**

	Description	Examples
-1	<b>Negative Recognition</b> is when the government's recognition of the San is detrimental to the group.	<i>Botswana</i> : Forced removal of San from Central Kalahari (1997, 2002) <i>South Africa</i> : Conscription of San into SADF (mid 1970s-80s)
0	<b>Non-Recognition</b> represents a silence on the issue. There may be government reports on the San communities but with no attempt to address or remedy their situation; a government-issued survey in a particular region may be a demographic report of a community but not propose any action. It represents a tacit acknowledgement of their existence, yet stops short of recognizing their social marginalization.	<i>Botswana</i> : Tagart (1934) and Silberbauer (1965) Bushmen Surveys <i>Namibia &amp; South Africa</i> : (Colonial/apartheid era) Creation of homelands that ignored the San
1	<b>Non-ethnic Recognition</b> is when a government addresses the San as a social group that exists and necessitates some governmental action, yet the action is addressed as a broader social policy rather than as community-specific. It is not important that the indigenous community is ethnically distinctive; they are grouped with any other people experiencing dispossession or marginalization.	<i>Botswana</i> : RADP (1979-), Statements to UN on the Draft Declaration (2006)
2	<b>Recognition as an Ethnic minority</b> is when a government takes a San-specific approach in their statements and programmes. They directly target the groups as an ethnic group, thereby implying a recognition of that the groups shares a distinct common culture. The San community is considered alongside other ethnic groups within the country.	<i>Botswana</i> : BDP (1968-78) <i>Namibia</i> : TAA (2001), protection of San languages, San-specific programmes <i>South Africa</i> : PanSALB recognition (1995)
3	<b>Recognition as a Distinct Ethnic Minority</b> is when a government addresses the San as possessing a distinct culture different from other minorities. It may at times recognize the groups as an indigenous peoples, especially internationally. Their policy approach to the groups may target them as a distinct peoples and yet rarely invokes their indigeness as the rationale for the action.	<i>Namibia</i> : Nujoma speech (1992) <i>South Africa</i> : Campaign speeches (1994), Mandela speech (1997), Interdepartmental Working Group (2005), Statement to OHCHR (2006)
4	<b>Full Indigenous Peoples' Recognition</b> is when the government affirms that San are a distinct ethnic group with a particular indigenous peoples status and they accord rights based upon this status. They target the groups with programmes deriving from their particular situation as an indigenous peoples in a manner distinct from how the government addresses non-indigenous groups. A form of "affirmative action."	<i>South Africa</i> : Appointed Khoesan representative to UNPFII (2004), Invited UN Special Rapporteur (2005)

Table 2: Government recognition of San: Continuum of Typologies

The government positions, as classified in the Typologies, can be used to measure the degrees of government recognition of the San when they are viewed as a continuum.<sup>184</sup> At the far left, Typology -1 represents a Negative Recognition. Typology 0 represents a non-recognition of the San as a people possessing any particular status. Typology 1 begins a Non-Ethnic recognition of San communities existing as a social grouping, Typology 2 indicates a further step of recognition because it views the San as an Ethnic Minority group, thus indicating a dominant-minority relationship and marginal status. In the Typology 3 stage there is a recognition that the San are a Distinct Ethnic Minority within the country, and there is often a reference to their distinct historical experience as a traditional group predating others. The endpoint of the continuum, Typology 4, is what the international-level norm advocates: Full Indigenous Peoples' Recognition, which would include some form of higher degrees of rights and autonomy based on this indigenous nature of the San.

The continuum signifies a trend, that in fact the changing degrees of government recognition of the San indicate a rightward movement. Each government has moved beyond Negative Recognition and Non-Recognition, and has at times been situated at Typology 1, Non-Ethnic Recognition by enacting government programmes that target social issues affecting underdeveloped rural communities (often including the San), but not with the explanation that the programmes are tailored for the San as either an indigenous or ethnic minority. Botswana shifted to Typology 2, Ethnic Minority Recognition, immediately after independence when it enacted San-specific development programmes, but later has moved closer to Typology 1, Non-Ethnic Recognition in its adoption of a non-ethnic policy framework. It does, however, exhibit Typology 2, Recognition as an Ethnic Minority qualities in its tendencies to speak of the San as an underserved group with a distinct language and lifestyle, and in its current move to resettle San on land in the Central Kalahari Game Reserve. This shift by Botswana is significant and will presently be explored in the argument in this Chapter.

Namibia is now closest to Typology 2, Recognition as an Ethnic Minority in its approach to the San, but it leans towards Typology 3, Recognition as a Distinct

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<sup>184</sup> This idea borrows from Sikkink (1993), who used a continuum of degrees of legitimacy to demonstrate the interplay between human rights and state sovereignty. See Literature Review.



Ethnic Minority in that at times it refers to the distinct historical experience and distinct character of the marginalization of the San. South Africa is best characterized as Typology 3, Recognition as a Distinct Ethnic Minority as it now regularly invokes discussion on the San as a particular ethnic group in its policies, and it has at times leaned toward Typology 4, Full Indigenous Peoples' Recognition in that it has participated in international indigenous peoples' activities and has indicated a need to develop San-specific policy based upon their historical experience.

From the data presented, the government policy direction, particularly in the past decade, has shifted toward the rightward endpoint of the continuum that represents a higher degree of San recognition.

## **5.2 Factors Contributing to the Trend in San Policy Direction of Botswana, Namibia, and South Africa**

In analyzing the factors for why this trend exists, some reasons can initially be eliminated at the outset. One is the idea that the San themselves played a substantial role in making their case an issue. Whilst there was, as discussed, some degree of mobilization amongst the San communities, their marginalization, fragmentation, and lack of access to official channels of government made it highly unlikely for them to undertake major grassroots organization. In fact, the San communities lacked a cohesive identity that would be a prerequisite for awakening a political consciousness.<sup>185</sup> Further, the critique is that even given the presence of human rights protections and democratic regimes, the San effectively are excluded from participation. As the director of an indigenous peoples organization familiar with the San case concluded: "...the South African government's rights-based paradigm 'ignores the inability of marginalized indigenous communities to effectively hold the state accountable for implementation of rights.'"<sup>186</sup>

Also, the trend in San recognition does not stem from the national governments' own initiatives. Under colonialism, as explained, there was understandably no recognition of the San. Post-independence, whilst each state has

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<sup>185</sup> This fact was a source of consternation to those working in San areas. Richard Lee, in 1986, noted that he was puzzled and concerned by the absence of any substantive political movement among the San of Namibia (or Botswana) where he had worked for over 20 years. (pgs. 96-7).

<sup>186</sup> Crawhall, Indigenous People of Africa Coordinating Committee, quoted in Robins, *Borderlands*, pg. 19.

acknowledged the need to address the San issue, and each claims to uphold human rights in a manner that is inclusive of San peoples alongside all other citizens, the programmes enacted are not singularly born out of the governments' own decisions. Policy decisions rarely arise in a vacuum unaffected by any other factor. The San issue is no different; in fact, it is far from a domestic government-directed matter.

Before asserting that it is primarily the international indigenous movement that accounts for this trend, I will address two alternative factors.

### **5.2.1. Regional Relations**

The regional relations between the three countries certainly is a contributing factor to their San policy directions. The three states attained independence against a similar colonial background—Namibia and South Africa more so. Issues of citizenship and ethnic consciousness in each country paralleled each other in their degree of potency at the outset of independent rule. To be sure, the reaction to *apartheid*, most notably, dominated each state's post-independence policies. For Botswana, the effect of apartheid on its San issue was by proxy; it was largely a reaction to South Africa's detested apartheid policies. The response of the newly independent Botswana government became one that was staunchly human rights-for-all. It sought to accommodate all its ethnic groups in a way that South Africa under apartheid did not. The BDP was initially enacted, albeit in a disorganized, piecemeal fashion, out of a necessity to formulate some sort of action on the San issue.

Similarly, Namibia and South Africa's first democratic administrations were keen to adopt policies that kept in line with non-discrimination after a history of politically enforced discrimination. During apartheid, Lee says, the South African government had "manufactured" and manipulated San identities in Namibia to match its need for loyal black allies;<sup>187</sup> it had both missionized and militarized them to advance its political goals in the region. In South Africa itself, the San effectively became invisible under the group areas act and were not to resurface as communities until the independence era.

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<sup>187</sup> Lee, in a study of the !Kung San, pgs. 96-7.

The San issue was initially swept up into this reaction to discriminatory apartheid policies and the colonial experience; the new governments' approach to the San communities was one that was quick to address them as part of the non-colonial population—San were 'indigenous' in the sense that they were not part of the colonial administration.<sup>188</sup> Human rights-based agendas became the framework of the new constitutions after decades of a system of exclusionary policies. Governments were eager to dole out progressive human rights proclamations and programmes that targeted previously disadvantaged groups, under which the San fell. The San became a symbol of national pride<sup>189</sup> and their first peoples status was referred to in a sweeping manner that aimed at support of the right of all "indigenous" Africans to the continent. However, as the swell of the human rights policies and pressure has crested<sup>190</sup> in the region, the governments have been reluctant to press further and fully acknowledge the San as an indigenous people in an aboriginal sense.

Also, to be sure, the San received attention because, by the time of independence, the San were so marginalized and comparatively small in numbers that they did not pose a threat to the succeeding regimes. In fact, they often bolstered the anti-colonial movements because they were decidedly non-settlers and non-colonial. With the rise of ANC rule in South Africa, the San were most often used as a campaigning tool in an ethnically-obsessed political climate. As Ihonvbere characterized the nature of post-colonial African states, post-colonial regimes have manipulated ethnic differences to "consolidate their control over society and promote exploitative relations of power, production and exchange."<sup>191</sup> Mohanty adds, in a study of the Angolan independence movement, that colonial powers provided a Hobbesian state of nature type of peace, but that upon national movements and post-colonialism, the new administrations work to contain 'tribal' differences (however

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<sup>188</sup> However, it must be noted that part of the difficulties with discriminatory policies to the San stems from the notion that at times San peoples were conscripted into the military forces of colonial forces. For example, the two San groups recently resettled from Schmidtsdrift to Platfontein, South Africa (the !Kung and the !Khwe) are actually military refugees from Angola that had served in the South African Defense Force.

<sup>189</sup> A prominent example is the use of San imagery and language on the national seal of South Africa. Despite often failing to recognize the San as a people, their likenesses and history are often fused with the liberation movement.

<sup>190</sup> Human rights lawyer Chennells, in personal communication, states that whereas the pinnacle of the human rights movement in South Africa was the Mandela era, there are far fewer students interested in human rights issues in South Africa currently, and that the human rights movement, as such, has basically disappeared.

<sup>191</sup> Ihonvbere, pg. 42.

temporarily this may be possible).<sup>192</sup> As Kimenyi argued, African leaders post-independence systematically weakened local governments in favour of strengthening the decision-making power of the central government, thus allowing some ethnic groups a greater access to resources and benefits than others.<sup>193</sup> The spoils born out of colonial rule were passed on to the independent governments. Whilst the Southern African region may have transitioned relatively peacefully to their respective democratic governments, the ethnicity issues remained a focal point.

The San thus were used as an object of ethnic politics and their history and images were exacted as a tool for national unity to a region reeling from the divisive “settler-versus-native” citizenship questions.<sup>194</sup> For example, Robins describes the immediate post-independence elections in the Northern Cape area of South Africa—a region where many San had been forcibly assimilated into “coloured” homelands—as one where ANC leaders drew upon a hybrid history of San, Khoi, and Nama ethnicities as a framework for an anti-colonial narrative.<sup>195</sup>

In a speech by ANC activist C. September (1994):

“We have suffered a great injustice during the years of apartheid and colonialism. Number one, we lost our language. And language is a powerful weapon because it binds people and makes them one...In the old Khoikhoi language there were about 20 dialects or regional languages which we spoke with 16 clicks ... The Xhosa people got their clicks from us ... The White people came. They took our language away from us...And with that they took the greatest part of our culture from us. The second thing they took was our land. In the old Khoikhoi tradition no person owned land... The land belonged to all of us”

September’s speech demonstrates the tactic of fusing the colonial-era dispossession with a new national effort at creating a human rights framework, squarely blaming the colonial administrators for the reason of a perceived cultural identity fragmentation in the region. The San (grouped here with other indigenous groups, what he terms the Nama and KhoiKhoi) became a strategy for uniting “Coloured” people with the broader nationalist movement. Promoting this shared heritage in an integrative manner is a key element in forging national loyalty to the new administration.

The San in the three post-colonial states were embedded with these sorts of back-and-forth political narratives pitting them at once as almost mythic history-bearers as part of the nationalist narrative, and also as very real, hyper-marginalized

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<sup>192</sup> Mohanty, pg. 12.

<sup>193</sup> Kimenyi, pg. 44.

<sup>194</sup> Mamdani, 1998, throughout.

<sup>195</sup> Robins, *Borderlands*, pg. 15.

wards of the state in need of state programmes. Such political behaviour is typical of the emerging administration in post-colonial states. Ihonvbere characterizes colonialism's impact on local notions of ethnicity and the polity by asserting that colonialism manipulated religion, region, and ethnic identity as part of the interests of the colonial administrators who sought to favour some groups over others.<sup>196</sup> Ethnic-based political organization and competition amongst groups weakened independence movements and kept a tactical exploitative hold on the groups that were being dominated. Ethnicity could be used to draw support and incite divisiveness and emotive responses in the post-colonial battle to gain access to scarce resources. Kimenyi classifies this struggle as ethnic rent-seeking. He says that in the post-colonial era, ethnic inequalities led to an ethnic competition for wealth transfers, and that this competition is to a large degree a motivating factor in African policy-making.<sup>197</sup> The San, who were categorically eliminated from the post-independence rent-seeking, could only rely on the whim of their new governments to take an initiative in addressing their issues. However, whatever interest the government took in addressing the San issue, it remained that the San were never fully participating members with equal access.

Given these arguments, it is demonstrated that regional relations is in fact one critical factor to account for the progressive San policy direction post-independence in Botswana, Namibia, and South Africa. Post-colonial emphasis on national unity and the ethnic distortions of apartheid dominated the government response to the question of the San. Immediately following independence, the regional relations thus significantly impacted each government's San policy direction; this was carried out in a way that ultimately had an affect of seeming to be progressive towards the San. The San were often referenced by government leaders and used in campaigning, yet their marginal position meant that they were not much of a threat to the new administrations—the San issue became an assortment of programmes that did not threaten the state sovereignty.

### **5.3.2. Democratization and the Expansion of Civil Society**

An interrelated factor in explaining the trend in San policy direction is **Democratization and the opening up of civil society** in the post-independence era.

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<sup>196</sup> Ihonvbere, pg. 52

<sup>197</sup> Kimenyi, pg. 48.

The activist groups in the independence movements on the far left, the newly exiting groups on the far right, and the central citizenry in between mobilized in the form of organizations seeking political space. Public participation in the independence era was at an all-time high; and as the social space opened up a collection of rights was asserted.

The ethnically divisive history in the region gave way to remarkable mobilization against it and saw the birth of a human rights movement. Ironically, Croucher proves, South Africa has one of the most developed civil societies precisely *because* of apartheid rather than in spite of it.<sup>198</sup> Apartheid actually instigated the formation of NGO networks and community-based organizations and a vociferous civil society. As a frame of reference, the UNPAN Directory of African NGOs now lists some 30 NGOs in Botswana, 22 in Namibia, and 110 in South Africa.<sup>199</sup> Given South Africa's comparative economic prowess and a population that dwarfs the other two<sup>200</sup>, the NGO ratio between the three countries is on par, demonstrating that each one indeed holds a civically active population.

Given that the region is civically active, then, is the first step in demonstrating just how the international indigenous movement was able to enter the region and establish a lasting political presence. Croucher, in a study of the gay liberation movement in South Africa, describes how the post-independence era in South Africa created a *political opportunity* structure which allows for the entry of myriad rights-seekers and previously unheard voices.<sup>201</sup> Tolerance and equality suddenly become the norm in this climate, and groups and opinions that would have been repressed during the previous administration—and that may still lack popular support from the citizenry—nonetheless flourish under a time of great social and political liberation. In such terms, the San did find themselves with immense political opportunity to assert their claims for recognition.

However, it became necessary for the San and their advocates to appropriately *frame* their claims within the independence context. It was initially unpopular for the

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<sup>198</sup> Croucher, pg. 326.

<sup>199</sup> UNPAN is the United Nations Online Network in Public Administration and Finance. The compilation of Africa NGOs was coordinated by the Office of the Special Coordinator for Africa and the Least Developed Countries (OSCAL) of the UN's Department of Economic and Social Affairs.

<sup>200</sup> The population of South Africa in 2005 was some 44,344,00 according to the Central Intelligence Agency, compared to Namibia's 2,030,000 and Botswana's 1,640,000.

<sup>201</sup> Croucher, influenced by Sidney Tarrow's social movement studies, pg. 317.

San to assert their claims based upon a distinctive status as a peoples, to lay claim to the San 'separateness,' given the apartheid backlash that arose from this seeming exclusivity. The language of the day became one of inclusivity and unification of *all* previously disadvantaged groups. To the present day, the international indigenous movement has in the southern African context cautiously framed itself as a human rights-based movement rather than as a minority-rights movement or as a separatist issue.

Civil society in the post-independence era thus was one of openness and a human rights-based norm. Political opportunity was opened for a vast array of competing rent-seekers that were able to frame their claims in the popular equality language of the day, and the San issue corresponded and flourished in this atmosphere.

### **5.3.3 Unique factors of note in each country**

With an understanding of the impact of regional relations and civil society on the San policy direction in tow, it is sensible to also note that the three countries under study are by no means equally impacted by those factors.

South Africa in particular, as it is nearly always singled out as an 'exceptional' case study, is also a distinctive case for comparison in this study. The dramatically higher level of wealth and infrastructure in South Africa compared to Botswana and Namibia affect its San experience post-independence. For example, the 2005 Human Development Index of South Africa<sup>202</sup> ranks it at 0.658, compared with Namibia's 0.627 and Botswana's 0.565. South Africa's economy is dominant; its GDP of \$152.3 billion dwarfs any other sub-Saharan African country.<sup>203</sup> The greater industrialization of South Africa means, for instance, that its level of civic participation is, understandably, more developed than Botswana and Namibia by the presence of more professionals and elites and social and institutional infrastructure.

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<sup>202</sup> The Human Development Index (HDI) is a comparative measure of a country's well-being, as measured by sociocultural indicators such as life expectancy, literacy, and standard of living. It was developed and is used by the United Nations Development Programme (UNDP). The HDI of each country places them within the category of "developing" rather than Developed or Underdeveloped.

<sup>203</sup> World Bank, 2004.

Beyond the structural realm, in what may be termed the ideational or symbolic realm, **South Africa's** status as a post-settler colony is also distinctive. The demographics of the country vis-à-vis the San mean that the San are a hyper-marginalized minority, and with a great ethnic distortion born out of the colonial past, that they are but a fraction of the population. The San in this context will never pose a major political force, represent a sizable part of the government, or undermine the sovereignty of the state. The San are more similar in South Africa to the relationship that indigenous groups in developed Western countries have to their domestic governments. Other post-settler colonies such as Australia, Canada, the United States, and New Zealand relate to their indigenous populations in a similar manner; indigenous identity issues are all the more thorny and access to resources—such as land claims—are heightened when there are vast economic issues at stake in these high land-value, developed areas.

Another unique quality amongst the three countries is that **Namibia** and **Botswana** each have a San representative in government, as discussed in the previous chapter. This fact would imply that San issues are actively driven at the domestic level in a way not found in Botswana and South Africa. However, the San representatives, however much a landmark this may represent for San in achieving this, in actuality the representatives are largely seen as elites that do not reflect the San experience or concerns.<sup>204</sup> Also, as discussed, the Namibian government has failed to recognize the traditional authority of two San groups and the presence of one San member in Parliament does not carry the amount of weight that having greater representation at the traditional authorities level would. Again, the issue of recognition is presented and the government has in this case chosen not to include the San groups. This unique factor of San representatives, then, is notable but not cause from deterring the argument.

Lastly, it is worth noting that **Botswana's** demographics are dominated by the Tswana majority of some 60 percent of the population and that a degree of ethnic chauvinism exists amongst the Tswana as constituting the norm. This differs from South Africa and Namibia, where more ethnic groups are represented in the political structures. Therefore, while the three countries have in this study been presented as they are purported to be, as multi-ethnic independent democracies, the truth is that the

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<sup>204</sup> ACHPR Report to Namibia, pg. 36.



power of the groups varies in the countries, and that in Botswana in particular the Tswana group is ethnically dominant. In looking at the recognition of the San, then, the heavily-dominant Tswana in Botswana may unduly sway the government's direction to the San and this must be noted. It is arguable that Botswana has little incentive to address the San because the San are not a major constituency. Whereas in Namibia and South Africa it is less easy to point to one landslide 'ethnic' group in power, Botswana is heavily dominated by one group. However, I do not find that that this characteristic deters the argument either. While Botswana may not have great incentive to address the San issue, I would argue that they also do not have great incentive *not* to address it; if the San are so marginalized and hold no traditional hard power, it would not be detrimental for the government to address them.

#### **5.4 Primary Factor: the International Indigenous Peoples' Movement**

Ultimately, the factors are interrelated and all together account for the trend. The regional relations and the opening up of civil society are co-explanatory factors for the government policy direction towards the San. One factor does not operate in isolation from the others; the political climate established by the dynamic regional relations and the newly created political space and active civic society all organically converge. However, I argue, the primary explanatory factor for the trend is the onset of the international indigenous peoples movement into the society and politics of this region in transition.

As the international movement of indigenous people is increasingly moving towards a human rights-based approach, the movement becomes increasingly more applicable to the San. The three states under concern, in their postcolonial form, have opened up to broader international human rights norms. As the indigenous peoples' movement crystallizes into an international human rights norm, the states are drawn into discussion around the San and are forced to respond to international pressure and interest groups. Whereas the democratization of the states provided the *opportunity structure* for the San claims for recognition, the international indigenous peoples movement provided the resources and vehicle for action that the San otherwise lacked.

To bolster this assertion, it is advantageous to consider the timing of the independence movements and the entry of the international indigenous peoples movement. The independence movements of **Namibia and South Africa** coincided with the international indigenous peoples movement's major activism in the region in a way that allowed for the movement to secure those governments' initial post-independence progressive San policies. That is, as detailed in the San policy direction trend in the previous chapter, the governments addressed the San in a progressive manner immediately following independence; the international indigenous movement seized upon this timing and has in the past decade been able to enhance and sustain that policy direction.

The successful Khomani San land claim, for example, was dealt with as a matter of 'indigenous peoples' rights, but it was brought about by the intersection of post-apartheid restitutive policies and the activism by various non-governmental advocates on behalf of San people. The land claim would not have been successful 5 years before, both because the apartheid government would not have allowed for it but also because the movement had yet to actively adapt to the African context. Even today the same issue would be met with considerable opposition, yet the climate was more malleable during the freshly independent human-rights progressive era. At a moment of nationalism, of fusing together a new national narrative, the San case was able to use the support proffered by the international movement and gain a foothold in a climate that was favourable to their claims. The South African government was doling out restitutive rights and the San were catapulted into the debates, not because of their own initiative—their position was far too marginalized to make this a possibility—but because it coincided with the highly-resourced international support.

Similarly, the Hoodia intellectual property case and the Central Kalahari Game Reserve issue serve as local indicators of change and demonstrates how the governments are increasingly asked to respond to San claims. The international indigenous peoples' movement has played a significant, I argue the *most* significant, role in pushing these cases into the government agenda. The movement has provided a new language in which to speak of the San communities—as an “indigenous peoples”—and has established an agenda for how best to relate to the indigenous peoples by creating an international norm, embodied in legislation such as the Draft Declaration on the Rights of Indigenous Peoples. The movement has thus set a

benchmark for how to approach the San and provided a network of information for how to reach those objectives. The states have been forced to respond to this new discussion in the region.

#### **5.4.1 The Special Case of Botswana**

The case of **Botswana** demonstrates the counter-example that supports this assertion; it presents the outcome of what occurs when the post-independence San policy direction occurred in the absence of the indigenous peoples movement. In the immediate post-independence years, Botswana also followed a more aggressive, San-upliftment approach to the San with the creation of the Bushman Development Programme. However, this initial momentum eventually led to a decay of that programme and a return to non-ethnic policy towards the San. The later wave of democratization that Namibia and South Africa experienced coincided with the entry of the indigenous movement in a way that was not available to Botswana in its earlier democratization.

Without the indigenous movement, the weak foundation of the San-specific programmes was exposed and its lack of commitment by the new administrations led to its eventual demise. The government approach was not enacted as a long-term directive or as a major component of government restructuring. The San were never destined to play more than a marginal role in the political structure of the new Botswana society; the BDP merely became part of an amalgam of human rights-based policies in the populist-driven postcolonial era.

As the director of the BDP describes the origins, referring to her own appointment to the post as Bushman Development Officer:

“(one can assume that) the creation of a special post tacitly indicated that the problems and situation of Bushmen were somehow special or different and accordingly required special attention...at the same time it is important to note...the post was certainly not established as the result of a defined policy or plan of action, in their regard, nor as a result of international or internal political or popular pressure—and most certainly not as a result of pressure from the Bushmen themselves, who remain even today singularly unvoiced.”<sup>205</sup>

This statement reveals that the BDP was created in the wake of the independence era, again not because of an overriding aim to develop them but rather simply as an outcome of the groundswell of new policy that blossomed after the independence

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<sup>205</sup> Wily 1979, pg. 170.

movement. Alongside other social policies and ideas that the government faced, the BDP was created to address an issue, namely, the “Bushman Problem,” and was left nearly singularly in the charge of the one Bushman Development Officer without other government attention.

It is only in the past 10 years with the entry of the international movement of indigenous peoples that Botswana has again revisited the issue and made notable policy direction change. As demonstrated in the trend outlined, Botswana was progressive and active in its San policy immediately upon independence similarly to South Africa and Namibia. However, their earlier independence meant that without significant bolstering international support, civil society intervention, or grassroots activism from amongst the San themselves, the BDP and San policy direction stagnated. Eventually the stagnation in initiative to the San by the Botswana government meant that the progressive policy approach of the BDP era was abruptly scrapped in favour of a decidedly non-ethnic approach in the form of the RADP. Without the international movement of indigenous peoples, most active in the past decade, the progressive approach to the San in the post-independence era floundered, exposing the weaknesses underlying the government approach. For South Africa and Namibia, the entry of the international movement of indigenous peoples coincided with the government’s progressive San policies in their independence timing. For Botswana, the entry of the international movement of indigenous peoples has occurred decades after it had addressed the San issue most significantly; it is only within the past decade, alongside South Africa and Namibia, that Botswana has again confronted its position on San peoples.

As argued, the primary reason for the government of Botswana’s reformulation of its San policy direction is precisely because of the opposition it has faced from the international activists. Given the new conceptions of indigenous peoples occurring at the international level, the government of Botswana has been questioned more directly than ever about this position on the San. The climate in Botswana surrounding the San is one of obstinacy at worst, and, at best, a grudging compliance with the international standards on indigenous peoples.

A report by the African Court on Human and Peoples Rights (ACHPR) Working Group on Indigenous Populations/Communities to Botswana demonstrates that there exists a major dichotomy between the international institutional norms,

academic researchers, and NGO advocate conceptualizations of the San as an indigenous peoples and as compared to the government's non-emphasis and tacit non-recognition of the San as an indigenous minority. One group the ACHPR delegation met with as part of its report termed the government policy "the policy of denial" and pointed to this non-recognition of the San as an indigenous group as the very reason for the failure of the string of development projects aimed at them for the past several decades.<sup>206</sup> Amongst San organizations, the perspective is similarly one of frustration with the government response. The coordinator of one NGO described that even out of the internal debates in Botswana, the government is suspicious of the international indigenous peoples dialogue and that the NGO has seen government representatives "undercover" at the UN-level conferences to listen in on what the San were reporting.<sup>207</sup> For that matter, the Botswana government itself acknowledges that they are at odds with the international norms, replying to the ACHPR interviews that:

"...UN institutions for the most part were controlled by the West and warned that if the African Commission were to allow itself to be led by the UN bodies, it would make itself irrelevant to the plight of the African people

From all sides regarding the San in Botswana, then, it is evident that there a lack of consensus on the appropriate plan of action for San development, and that the disagreement stems from the variant recognition issues of the San as an "indigenous" people. The domestic government level sees the San in a significantly different manner than the international level does.

Therefore, again, the Botswana situation supports the given argument. The international indigenous movement has emerged long after independence, in a time when the Botswana administration is less receptive to the ideology of the movement and its conceptualization of the San as and indigenous peoples with the rights and assumption that that particular status entails. Botswana is similar to Namibia and South Africa in that following independence it initiated progressive San policies. It follows that had Botswana also followed the independence timing of Namibia and South Africa, its relation with the international movement and the San recognition would likely have been more similar as well.

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<sup>206</sup> ACHPR Botswana, pg. 17, quoting a meeting with representatives of the University of Botswana San/Basarwa Research Project.

<sup>207</sup> Personal communication with coordinator of WIMSA.

## **5.5 Final Conclusions**

It has been argued here that the directions of the governments of Botswana, Namibia, and South Africa to their San communities display a trend in their government policy directions towards recognizing the San as an “indigenous peoples,” and that the primary explanation of this trend is the entry of the international movement of indigenous peoples into the region in the mid-1990s.

The three factors considered—the changing regional relations, the opening up of civil society, and the international indigenous peoples movement—have together interacted in a way that accounts for the rightward shift on the Typologies Continuum. While the post-apartheid climate of pro-human rights issues and civil society’s active role in that era did facilitate the trend in San policy, without the international movement of indigenous peoples the San were unlikely to have advanced their issues on their own or to have identified as “indigenous peoples” asserting their collective rights.

A key element is that as the post-independence era progressed, the Botswana government did retract from its original position and, following my argument, it is likely that South Africa and Namibia would have followed this trend had there not been the international intervention by the onset of the international indigenous peoples’ movement. The trend in government policy direction is particularly compelling given the magnitude of the factors working against the San having any political space in the region, or, for that matter, for the scattered, fragmented groups to even be considered “San” at all. It is highly likely that the San issue would in fact be a non-issue in the post-independence era in these three countries. In a region so sharply unequal and bitterly divided, it is unlikely that the San would emerge as a policy issue at all—they would seem to further fragment the new civic. Secondly, the San issue is so marginal and the San wield little explicit political power that would explain the attention given to them; it is conceivable that they would slip into a non-existent fringe issue comfortably at the margins of a societies already inundated with political rent-seekers. Thirdly, the concept of an indigenous peoples is largely seen as a Western problem and Western import that is unpopular in the region. As the government response in Chapter Four noted, a common mantra is that ‘all Africans

are indigenous.' For these reasons, the trend in government response to the San is both significant and indicative of greater factors at work than just happenstance.

How, then, have the San been able to use the vehicle of the international indigenous people's movement to maintain a political space in the region? If the political opportunity was opened up to the San with the dawn of democracy in each country, yet, as I argue, it was the advent of the international indigenous peoples movement that secures and cultivates its potency, then there must be indicators for how the movement is able to maintain this momentum in the countries. For this exercise, it is natural to turn to the new social movement literature as discussed in the Literature Review, Section 2.2.3.

If a social movement is based upon a political opportunity structure with the factors of *openness and accessibility of government*, the *stability of existing political alignments*, the existence of *sympathetic local elites*, and the *capacity for building stable alliances* and coalitions with other groups, the San are a mixed bag of meeting these factors.<sup>208</sup> It has been shown for the San that the governments provided the opportunity when they democratized. The other three factors worked against the San—the new political alignments were not necessarily stable or receptive to the San claims, there were few sympathetic elites, and the San did not have a capacity to build alliances with other groups. However, the San were able to, above the other indicators, draw upon the external opportunities and resources available to them from the outside movement. That movement *did* actually embody those factors—it was keen to expand itself beyond the bounds of its 'developed world' origins, it was fast gaining an international community of advocates, and it was aligning itself with influential human rights norms at the UN level. The other indicators became more actualized for the San with time, but the drawing upon the external—or imported—social movement and its resources is the primary driver for all other factors.

All told, the international indigenous movement has drawn upon the civil rights movement in the US in its own origins,<sup>209</sup> and then exported itself to new terrain, in this study the San of Southern Africa. The existence of a political opportunity structure in the newly democratized states in that region facilitated the movement's ability to enter into the political agenda in a sustainable way. The

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<sup>208</sup> Tarrow, throughout.

<sup>209</sup> See Chapter 3.

movement's adaptation to a staunchly human rights-based framework resonates in a region that is exceptionally accommodating to international human rights norms given its divisive past. Further, whilst African countries have typically been less receptive to outside ideologies and prefer African-originating policies and institutions, the international movement of indigenous peoples has been able to gain key allies with the respected ACHPR. By working through African channels, the movement has done critical legwork in legitimizing itself to African governments.

The Southern African region has been a key battleground for the indigenous peoples' movement given its comparatively stable governments, economies, and infrastructure that accommodates the sustainability of NGOs. In particular, South Africa's settler colony history correlates with the histories of North America, Australia, New Zealand, and Scandinavia in its economic dominance and thus the movement was more readily translatable to that country. It is in South Africa that the international indigenous movement has met with the most success in exporting its central tenets; South Africa, as shown, is comparatively the more accommodating state to San recognition at the international level. In this way, the movement has entered into South Africa as a norm-driver for the region. As the movement is now active continent-wide, it remains to be seen what influence the South African progressive San position may wield even outside of the region. There is a possibility that South Africa may represent a 'shoehorn' for the rest of the continent, a way for the movement to spread with greater hold amongst relatively new democracies.

The emergence of San activism and claims for indigenous peoples' status has been significantly fuelled by exogenous donor support. As Igoe found in the Barabaig internationalization experience, what he terms their "becoming indigenous," the group became popular amongst Western donors because of the alliance of Barabaig leaders and Western human rights advocates. In the post Cold War era, indigenous group NGOs became sought after by development practitioners who sought "grass roots social movements based on a diverse array of local identities"<sup>210</sup> instead of state-centred development that had been called into question because of state failure in Third World governments. Indigenous peoples would clearly lie outside of the government and, with the formation of indigenous NGOs throughout the 1990s, Western donors had an attractive array of purportedly grassroots social movements.

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<sup>210</sup> Igoe, pg. 7.



San activism has similarly benefited from its international representation and construction by the West and has capitalized off of the popularity of the San in media and research. San-focused NGOs emerged in the 1990s and have been navigating a tenuous path of maintaining their outside representation to foreign donors and their on-the-ground lived experience as an underclass in their own societies. Robins terms their conflicting representation as a symptom of the “donor double vision of the San—as both ‘First Peoples’ and modern citizens-in-the-making”<sup>211</sup> The NGOs have acted as an arbitrator, balancing the individual development needs of local communities with putting forth a San sheen on the package that is likely to receive funding that can ultimately assist in meeting those needs.

The case of the international indigenous movement, the San, and the government policy direction of Botswana, Namibia, and South Africa is indicative of larger debates around international norms and state policy. The movement is human rights-based and would seem to not have great influence on traditional realist notions of state policy formation. However, the case may align with the growing body of study on normative power, which the indigenous peoples movement is fashioning out as an international norm and which the San have increasingly been successful at utilizing. A critical link that is traced by this current study is how, interestingly, the international movement has proved most potent or effective in new states rather than in its origins in the most developed states. The indigenous recognition can serve as a case study for how new social movements can have greater impact in new states, where there is more room for major change.

The recognition of the San as an indigenous peoples is a rapidly-evolving issue in the region with both tangible resource issues as well as broader philosophical and normative considerations at stake. The Central Kalahari Game Reserve issue in Botswana and the Hoodia case in South Africa have already captured massive attention. The current deliberations over the UN Draft Declaration on the Rights of Indigenous Peoples, with Botswana leading the African group in opposition, and South Africa torn between its stated support and its African alliances, exemplifies the regional debates. It is expected that the local debates will only intensify as the discussions on indigenous peoples occurring at the international level continue to gain greater momentum.

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<sup>211</sup> Robins, “Citizens and Bushmen,” throughout.

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## **Appendix A**

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*Recognizing and reaffirming* that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

*Solemnly proclaims* the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

*Article 1*

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

*Article 2*

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

*Article 3*

Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

*Article 4*

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

*Article 5*

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

*Article 6*

Every indigenous individual has the right to a nationality.

*Article 7*

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

*Article 8*

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:

(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or

resources;

(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;

(d) Any form of forced assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures;

(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them

#### *Article 9*

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

#### *Article 10*

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

#### *Article 11*

1. Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

#### *Article 12*

1. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

#### *Article 13*

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

#### *Article 14*

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods

of teaching and learning.

2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

#### *Article 15*

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

#### *Article 16*

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately-owned media to adequately reflect indigenous cultural diversity.

#### *Article 17*

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, *inter alia*, employment or salary.

#### *Article 18*

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

#### *Article 19*

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

#### *Article 20*

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled

to just and fair redress.

*Article 21*

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

*Article 22*

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

*Article 23*

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

*Article 24*

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

*Article 25*

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

*Article 26*

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

*Article 27*

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

*Article 28*

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, of a just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

*Article 29*

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

*Article 30*

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a significant threat to relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

*Article 31*

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.



Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of their mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, judicial systems or customs, in accordance with international human rights standards.

Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.
2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
2. Nothing in this Declaration may be interpreted as to diminish or eliminate the rights of Indigenous Peoples contained in treaties, agreements and constructive arrangements.

Article 38

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

*Article 39*

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

*Article 40*

Indigenous peoples have the right to have access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

*Article 41*

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

*Article 42*

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

*Article 43*

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

*Article 44*

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

*Article 45*

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

*Article 46*

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations.
2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law, in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.
3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.



## **Appendix B**

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### **Chronology of Events Relating to International-level Indigenous Peoples' Rights:<sup>1</sup>**

- 1923 Chief Deskaheli, Haudenosaunee Nation, travels to UN in Geneva to plead the case of his peoples
- 1925 Maori religious leader T.W. Ratana travels to London to petition King George over loss of lands under Treaty of Waitangi
- 1946 Belgium raises the issue of indigenous peoples' protection under the decolonization mandate of the League of Nations and the UN; North and South America object
- 1949 UN General Assembly's recommendation for a study of the problems of indigenous peoples is defeated by objection from the US
- 1950s North American Indian Brotherhood sends a delegation to the UN
- 1956 Nordic Saami Council is formed by Saami from Norway, Sweden, and Finland
- 1957 ILO approves Convention No. 107 Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries
- 1971 UN Sub-Commission on the Protection of Minorities appoints Jose Martinez Cobo as the Special Rapporteur for a study on the international status and problems of indigenous peoples
- 1971 George Manuel, a Shuswap Indian, travels to New Zealand and Australia to meet with other indigenous leaders and activists
- 1972 Cultural Survival is founded by a group of American anthropologists to support projects directed toward ensuring the survival of indigenous peoples
- Australian aboriginals protest by establishing an "Aboriginal (tent) Embassy" on the grounds of Parliament in Canberra
- Plans are announced for an international indigenous peoples' conference
- 1973 First Circumpolar Arctic People's Conference meets in Copenhagen
- 1974 National Indian Brotherhood of Canada is granted NGO observer status by the UN Economic and Social Council
- First meeting of the American Indian Parliament with representatives from Indians in Bolivia, Argentina, Paraguay, Brazil, and Venezuela convenes

<sup>1</sup> Adapted from an appendix in Wilmer, Franke. *The Indigenous Voice in World Politics*. 1993. Pgs. 212-14.

- 1975 World Council of Indigenous Peoples forms in Vancouver, with indigenous peoples represented by 52 delegates and 135 observers from 19 countries
- 1977 Central American Indigenous Peoples organization forms
- NGO Conference on Discrimination Against Indigenous Peoples of the Americas is held in Geneva
- 1978 World Conference to Combat Racism endorses economic and cultural rights of indigenous peoples
- Indian Law Resource Center is established to promote international validation of claims by indigenous peoples
- 1979 Hunger-striking Saami in Norway protest a hydroelectric project and draw attention to Saami indigenous rights
- 1980 Fourth Russell Tribunal meets in Rotterdam to hear allegations regarding the violation of rights of Indians in the Americas
- 1981 Indian Council of South America is created
- 1982 World Bank issues guidelines on Tribal Peoples and Economic Development
- Conference on Native Resource Control and the Multinational Challenge in Washington D.C. convenes, involving 100 indigenous delegates meeting with country experts to discuss the impact of development projects on indigenous peoples and resources
- UN Working Group on Indigenous Populations is established per an Economic and Social Affairs decision
- 1983 UN Sub-Commission report completed
- UN General Assembly declares 1992 the International Year of the World's Indigenous Peoples
- World Council of Indigenous Peoples meets in Canberra
- 1984 World Council of Indigenous Peoples meets in Panama, attended by more than 300 indigenous delegates from 23 different countries
- Indian representatives from Brazil, Ecuador, Colombia, Peru, and Bolivia present their case to the UN Working Group on Indigenous Peoples, marking the first time South America Indians make an appeal directly to an international forum

- 1987 Consultative status given to eight indigenous organizations, including one governmental body of an Indian tribe—the Grand council of the Cree
- 1989 Seminar on Effects of Racism and Racial Discrimination on the Social and Economic Relations between Indigenous Peoples and the State
- Revised version of ILO Convention no. 107 is adopted, no. 169
- Biannual Inuit Circumpolar Conference meets in Greenland
- World Council of Churches convenes a Global Consultation in Darwin, Australia, attended by 125 indigenous representatives from 14 nations to declare a state of emergency in regard to the survival and status of indigenous peoples worldwide
- 1991 UN Working Group completes a final draft of proposed principles for a Universal Declaration
- 1992 UN Study of Treaties, Agreements and Other Constructive Arrangements Between States and Indigenous Peoples
- 1993 UN-declared International Year for the World's Indigenous Peoples
- 1995 Start of UN Decade of the World's Indigenous Peoples
- 1997 UN workshop in Santiago to discuss creation of UN Permanent Forum on Indigenous Issues
- Indigenous Peoples of Africa Co-ordinating Committee is formed as an umbrella member organization for African indigenous peoples NGOs, gains Economic and Social Affairs observer status
- 2002 First Session of the UN Permanent Forum on Indigenous Issues meets and becomes an annual two-week session that engages indigenous leaders and member states in direct dialogue
- 2006 Historic first session of the restructured UN Human Rights Council adopts the Draft Declaration on the Rights of Indigenous Peoples
- Third Committee of the UN, led by Botswana delegation and supported by the African Group, votes to defer consideration of the Draft Declaration to allow time for further consultation

**Draft resolution recommended for adoption by the General Assembly**

[See chapter II, sect. A, resolution 1/2, and chapter V.

of the Human Rights Council Report A/61/53]

**1/2. Working group of the Commission on Human Rights to elaborate  
a draft declaration in accordance with paragraph 5 of  
General Assembly resolution 49/214 of 23 December 1994**

*The General Assembly,*

*Taking note of Human Rights Council resolution 1/2 of 29 June 2006, by which  
the Council adopted the text of the United Nations Declaration on the Rights of  
Indigenous Peoples,*

- 1. Expresses its appreciation to the Council for the adoption of the  
United Nations Declaration on the Rights of Indigenous Peoples;*
- 2. Adopts the Declaration as contained in the annex to the present resolution.*

**ANNEX**

**UNITED NATIONS DECLARATION ON THE  
RIGHTS OF INDIGENOUS PEOPLES**

*The Human Rights Council,*

*Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all  
peoples to be different, to consider themselves different, and to be respected as such,*

*Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures,  
which constitute the common heritage of humankind,*

*Affirming further that all doctrines, policies and practices based on or advocating superiority of  
peoples or individuals on the basis of national origin, racial, religious, ethnic or cultural differences are  
racist, scientifically false, legally invalid, morally condemnable and socially unjust.*

*Reaffirming that indigenous peoples, in the exercise of their rights, should be free from  
discrimination of any kind,*

*Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia,  
their colonization and dispossession of their lands, territories and resources, thus preventing them from  
exercising, in particular, their right to development in accordance with their own needs and interests,*

*Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples  
which derive from their political, economic and social structures and from their cultures, spiritual  
traditions, histories and philosophies, especially their rights to their lands, territories and resources.*

*Recognizing also* the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

*Welcoming* the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring an end to all forms of discrimination and oppression wherever they occur,

*Convinced* that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

*Recognizing* that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

*Emphasizing* the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

*Recognizing in particular* the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

*Recognizing* that indigenous peoples have the right freely to determine their relationships with States in a spirit of coexistence, mutual benefit and full respect,

*Considering* that the rights affirmed in treaties, agreements and constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

*Considering also* that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

*Acknowledging* that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights affirm the fundamental importance of the right of self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

*Bearing in mind* that nothing in this Declaration may be used to deny any peoples their right of self-determination, exercised in conformity with international law,

*Convinced* that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

*Encouraging* States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

*Emphasizing* that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

*Believing* that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field.